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A TREATISE
ON
EQUITY JURISPRUDENCE,

AS ADMINISTERED IN
THE UNITED STATES OF AMERICA;
ADAPTED FOR ALL THE STATES,
AND
TO THE UNION OF LEGAL AND EQUITABLE REMEDIES
UNDER THE REFORMED PROCEDURE.

By JOHN NORTON POMEROY, LL.D.

SECOND EDITION,
BY
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IN THREE VOLUMES.

VOL. III.

SAN FRANCISCO:
BANCROFT-WHITNEY COMPANY,
LAW PUBLISHERS AND LAW BOOKSELLERS.
1899.

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§ 1127. **Jurisdiction of Equity.** — At the common law no action could be maintained to recover a legacy, unless it was a specific legacy of goods, and the executor had assented to it so that the property therein had vested in the legatee.¹ The power of the ancient ecclesiastical courts over the subject-matter of successions and administration was also very limited and imperfect, and was at best but a lame jurisdiction.² The court of chancery, therefore, took and exercised a concurrent jurisdiction over legacies, as a part of its broader jurisdiction over administrations. This jurisdiction, as well over legacies as administrations, is based upon the trust relation existing between an executor or administrator and the creditors, legatees, and distributees; upon the necessity of a discovery, an accounting or a distribution of assets in order to determine the rights of all interested parties; and upon the fact that the remedies given by all other courts are inadequate, incomplete, and uncertain. The jurisdiction, originally concurrent, but necessarily exclusive in certain species of legacies, became, and still continues to be, practically exclusive in England over the entire subject of legacies.³

§ 1128. **Where Jurisdiction of Equity was Exclusive.** — Over certain species of legacies the jurisdiction of

¹ *Deeks v. Strutt*, 5 Term Rep. 690; *Doe v. Guy*, 3 East, 120. Although each individual creditor might recover a judgment at law for the amount of his demand, and although there is nothing in the nature of things to make it impossible for a general legatee to recover judgment at law for the amount of his legacy, yet the legal procedure furnished absolutely no means by which the rights and claims of all creditors, legatees, and distributees could be ascertained and ratably adjusted, the assets proportionably distributed among those having demands of an equal degree as to priority, and the estate finally settled. There are a few early cases which seem to authorize an action at law to recover a general legacy when the executor has expressly assented thereto, but these decisions have long been

disregarded, and their doctrine has become obsolete in England. Such action is permitted by certain early American cases: See *Dewitt v. Schoonmaker*, 2 Johns. 243; *Beecker v. Beecker*, 7 Johns. 99; 5 Am. Dec. 246; and an action at law is given to the legatee, under various conditions of fact, by the statutes of several states.

² See *Pamplin v. Green*, 2 Cas. Ch. 95; *Matthews v. Newby*, 1 Vern. 133; *Petit v. Smith*, 5 Mod. 247.

³ See *Adair v. Shaw*, 1 Schoales & L. 243, 262, per Lord Redesdale; *Anonymous*, 1 Atk. 491, per Lord Hardwicke; *Hurst v. Beach*, 5 Madd. 351, 360; *Farrington v. Knightly*, 1 P. Wms. 544, 549, 554; *Atkins v. Hill*, Cowp. 284, 287; *Franco v. Alvares*, 3 Atk. 342, 346; *Pratt v. Northam*, 5 Mason, 95, 105; *Prescott v. Morse*, 62 Me. 447; [also § 156.]

chancery was originally and necessarily exclusive, since the ecclesiastical courts possessed no jurisdiction in such cases. These were legacies charged upon land,¹ and legacies given in trust, or which involve the carrying into effect of a trust, either express or arising by operation of law.² In certain other cases the equitable jurisdiction was necessarily exclusive, because the relief given by the ecclesiastical courts was wholly inadequate to protect the rights of all the parties interested in the legacy or in the estate.³ Among the most important of these cases were the following: Where a discovery of assets or a final settlement of the whole estate is required;⁴ when a legacy is given to a married woman,⁵ or is given to an infant,⁶ and where a general legacy is given payable at a future day, since the court of equity, for purposes of security, can direct the executor to pay the amount into court, or such security to be given as the circumstances may require;⁷ and finally, when a specific legacy is given to one person for life, and on his death to another person absolutely, since a court of equity can protect the remainderman by requiring the life owner to give security where there is waste or danger of waste and consequent loss of the property.⁸ None of these incidents connected with a decree

¹ *Reynish v. Martin*, 3 Atk. 330, 333; *Sherman v. Sherman*, 4 Allen, 392. The jurisdiction of the ecclesiastical courts was confined to personal legacies.

² *Anonymous*, 1 Atk. 491; *Hill v. Turner*, 1 Atk. 515; *Farrington v. Knightly*, 1 P. Wms. 544, 549; *Prescott v. Morse*, 62 Me. 447.

³ In such cases the court of chancery would, as a matter of course, restrain by injunction the proceedings begun in the ecclesiastical courts.

⁴ *Pratt v. Northam*, 5 Mason, 95, 105. [As to discovery, see §§ 235, 236, 346.]

⁵ Because if the husband sues for it in the ecclesiastical court there was no power to compel him to make a settlement, and thus to protect the wife's equity: *Anonymous*, 1 Atk. 491; *Hill v. Turner*, 1 Atk. 515; *Meals v. Meals*, 1 Dick. 373.

⁶ Because the ecclesiastical court could not provide for investing, securing, or accumulating the fund: *Horrell v. Waldron*, 1 Vern. 26.

⁷ See *Slanning v. Style*, 3 P. Wms. 334; *Blake v. Blake*, 2 Shoales & L. 26; *Johnson v. Mills*, 1 Ves. Sr. 282; *Phipps v. Annesley*, 2 Atk. 57, 58; thus where a legacy is given upon a contingency, the court may order the entire sum out of which it would be payable to be handed over to the residuary legatee upon his giving security for its payment upon the happening of the contingency: *Webber v. Webber*, 1 Sim. & St. 311.

⁸ *Foley v. Burnell*, 1 Brown Ch. 274, 279; *Slanning v. Style*, 3 P. Wms. 334, 336; *Leeke v. Bennett*, 1 Atk. 470; and see *Randall v. Russell*, 3 Mer. 190, 193; *Howe v. Earl of Dartmouth*, 7 Ves. 137; *Mills v. Mills*, 7 Sim. 501; *Fryer v. Buttar*, 8

for the payment of legacies came within the cognizance of the ecclesiastical courts.

§ 1129. **Equitable Jurisdiction in the United States.**—Such being the original jurisdiction as exercised by the English court of chancery, it exists to its full extent, unabridged by statutes, in but a few of the states; in very many states it has been largely restricted, in some it has become practically obsolete, and in a few it has been expressly abrogated. The general nature, scope, and powers of the probate courts in this country have already been described.¹ These courts have generally the power to decree payment of legacies, on the application of individual legatees, during the pendency of an administration, and to call the executor to a final account, and to decree a final settlement and distribution of the estate, and therein to determine and protect the rights of legatees, at least in all ordinary cases. In such proceedings the probate courts follow the settled doctrines of equity, and are able to grant some of the remedies originally peculiar to the court of chancery.² While the equitable jurisdiction is thus rendered unnecessary under ordinary circumstances, it nevertheless still exists in all those special cases which are not embraced within the legislation, and in some of the states it remains in its original extent, entirely unabridged.³ I purpose to add a very brief out-

Sim. 442; *Benn v. Dixon*, 10 Sim. 636; *Neville v. Fortescue*, 16 Sim. 333; *Cafe v. Bent*, 5 Hare, 24, 36; *Hunt v. Scott*, 1 De Gex & S. 219; *Covenhoven v. Shuler*, 2 Paige, 122, 132.

¹ See vol. 1, § 347.

² See *ante*, vol. 1, §§ 348, 349, and cases cited in the notes. In addition to these extensive powers conferred upon the probate courts, the jurisdiction of the common-law courts has been enlarged by statute in several of the states; in some, an action at law against the executor is given to the legatee; in others, after a decree of distribution by the probate court, the legatee is permitted to sue the executor and his sureties on his official bond. In the face of such legislation, the equity

jurisdiction has naturally fallen into disuse, even where it is not expressly abrogated by the statutory language.

³ The equitable jurisdiction remains unrestricted in the United States courts in all cases of federal cognizance on account of the citizenship of the parties: *Ante*, § 293; *Pratt v. Northam*, 5 Mason, 95, 105; and in certain states it is unaffected by the statutes: See *Frey v. Demarest*, 16 N. J. Eq. 236, 238, 239, and cases cited; and *ante*, § 350. For a more extended examination of the present condition of the equitable jurisdiction over the general subject of administrations in the various states, see *ante*, vol. 1, §§ 348-352, and *post*, sec. iii. of this present chapter, §§ 1152-1154.

line only of the equitable doctrines concerning legacies,¹ — doctrines which control the action of probate courts, and which are embodied in the modern statutes upon the subject enacted in several of the states.

§ 1130. **Kinds of Legacies — Specific Legacies.**—With regard to their intrinsic nature and qualities, legacies are of three kinds: specific, general, and demonstrative. A specific legacy is a bequest of a specific article of the testator's estate, distinguished from all others of the same kind; as, for example, a particular horse, or piece of plate, or money in a certain purse or chest, a particular stock in the public funds, a particular bond or other instrument for the payment of money.² Whether a legacy is

¹ The subject is so extensive that it requires volumes for its full discussion. I shall attempt nothing more than the barest outline, and for an exhaustive treatment must refer the reader to such works as Roper on Legacies, Jarman on Wills, Redfield on Wills, and the like.

² If the article is sufficiently distinguished from all others of the same kind, it is immaterial whether it is described as being part of the testator's estate at the time of making the will or at the time of his death; it is essential, however, that the article should form a part of his estate at the death of the testator: *Stephenson v. Dowson*, 3 Beav. 342, 347, 349, per Lord Langdale; *Ashburner v. Macguire*, 2 Brown Ch. 108; 2 Lead. Cas. Eq., 4th Am. ed., 600, 605, 646. In *Tift v. Porter*, 8 N. Y. 516, the testator at the date of his will owned 360 shares of the stock of the Cayuga County Bank. His will gave "240 shares of Cayuga County Bank stock" to A, and 120 shares of the same stock to B, not adding any further words to indicate the testator's intent. The court held that a legacy is general and not specific, unless by its terms it indicates a particular part of the testator's state as the thing bequeathed. These legacies were therefore general. If the testator had said "240 shares of *my* Cayuga County Bank stock," the legacy would have been specific. In *Loring v. Woodward*, 41 N. H. 391, 394, 395, the will gave to a legatee

"one half of all *my* stock in the following railroads [naming them], and one half of my stock in the Webster Bank." At the time, the testator owned these stocks. The court, after giving the definition as in the text, held that the legacy was specific, adding: "A legacy of *my* stock, or in my stock, or a part of my stock, is deemed specific"; citing *Wallace v. Wallace*, 23 N. H. 149; *Ford v. Ford*, 23 N. H. 212; *Kirby v. Potter*, 4 Ves. 750; *Guy v. Sharp*, 1 Mylne & K. 589; *Sibley v. Perry*, 7 Ves. 529; and see *Kunkel v. Macgill*, 56 Md. 120. In *Farnum v. Bascom*, 122 Mass. 282, a testatrix gave her wearing apparel to a legatee; held, a specific legacy. She gave "the use, improvement, and income" of a certain piece of land to A for life, remainder in fee to B; held, a specific devise. She also gave a certain mortgage, and note secured thereby, for two thousand five hundred dollars to H. F., in trust to pay the amount when collected to two of her nephews, one half to each on their coming of age. Held, a specific legacy; and the court said (p. 285): "Where the intent is to bequeath a certain sum (say \$1,000 or \$5,000) and the circumstance that it is then out on mortgage or other security is INCIDENTAL merely, and does not constitute an ingredient in the gift, the legacy is general: *Le Grice v. Finch*, 3 Mer. 50. But if the gift be of the sum due upon a mortgage of particular premises, or upon a certain note described, the legacy is specific:

specific depends wholly upon the language of the will. Unless the language described points out and identifies the particular thing given as a part of the testator's estate, distinguishing it from all other things of the same kind, then it is not specific. Although the testator may, at the time of executing the will, have an article or articles of the same kind as that which he purports to give, still, unless his language is sufficient to refer to, designate, and identify the very article itself as forming a part of his estate, which he thereby gives, the legacy is not specific, but general. Under these circumstances, the word "my" is often operative in identifying the article.¹ A specific

Sidebotham v. Watson, 11 Hare, 170; Gillaume v. Adderley, 15 Ves. 384; Chaworth v. Beech, 4 Ves. 555; Innes v. Johnson, 4 Ves. 568; Giddings v. Seward, 16 N. Y. 365. So if the gift is the proceeds of a certain mortgage, or all the money due on the bond of A B, or all the money standing to the testator's credit in a particular bank, such legacy is specific: Stout v. Hart, 6 N. J. Eq. 414. Where the bequest is not of the sum of money due on a particular security, but of a particular security described, the gift is not the less specific, for nothing will fulfill the terms of the bequest but the very thing itself." In Towle v. Swasey, 106 Mass. 100, the will gave to a legatee "whatever sum may be on deposit in the Provident Institution for Savings"; held, a specific legacy.

¹ The following abstract of decisions will furnish illustrations of these rules under a great variety of circumstances: *Gifts of money*: While legacies of particular sums not expressly identified — e. g., \$1,000, \$5,000 — are general, a bequest of certain money which is identified as the money in a certain bag, or deposited in a certain bank, and the like, is specific: Lawson v. Stitch, 1 Atk. 507; Towle v. Swasey, 106 Mass. 100; Smith v. McKitterick, 51 Iowa, 548; Beck v. McGillis, 9 Barb. 35; Cagney v. O'Brien, 83 Ill. 72. *Chattels*: A bequest of personal chattels described so as to be identified and separated from the rest of the testator's estate, as the furniture in a particular house, and also gifts of all

other personal property thus identified by description, are specific: Gayre v. Gayre, 2 Vern. 538; Clarke v. Butler, 1 Mer. 304; Robinson v. Webb, 17 Beav. 260; Powell v. Riley, L. R. 12 Eq. 175; Golder v. Littlejohn, 30 Wis. 344; Stall v. Wilbur, 77 N. Y. 158 (bequest of a growing crop on land devised); Spencer v. Higgins, 22 Conn. 521; Lilly v. Curry's Ex'r, 6 Bush, 590; McGuire v. Evans, 5 Ired. Eq. 269; [McFadden v. Hefley, 28 S. C. 317; 13 Am. St. Rep. 675]. *Stock*: Bequests of the whole or part of shares, stocks, bonds, and such securities, either governmental or issued by corporations, given in language which "marks the specific thing, the very *corpus*," are specific; e. g., when the testator says "my stock," so much "in" or "of" "my stock," "my shares," "invested by me" in a company named, "which I have," or "possess," or "standing in my name," or "all my property in the funds," and the like: Sibley v. Perry, 7 Ves. 522, 529; Barton v. Cooke, 5 Ves. 461; Kirby v. Potter, 4 Ves. 748, 750; Measure v. Carleton, 30 Beav. 538; Shuttleworth v. Greaves, 4 Mylne & C. 35; Miller v. Little, 2 Beav. 259; Kermod v. Macdonald L. R. 3 Ch. 584; 1 Eq. 457; Humphreys v. Humphreys, 2 Cox, 184; Gordon v. Duff, 3 De Gex, F. & J. 662; Hayes v. Hayes, 1 Keen, 97; Vincent v. Newcombe, 1 Younge, 599; In re Jeffery's Trusts, L. R. 2 Eq. 68 ("the pink coupons in the pigeon-hole for £3,666"); In re Gibson, L. R. 2 Eq. 669; Oliver v. Oliver,

legacy only becomes operative in case the very article given continues to form a part of the testator's estate at

L. R. 11 Eq. 506; *Davies v. Fowler*, L. R. 16 Eq. 308; *Pollock v. Pollock*, L. R. 18 Eq. 329; *Page v. Young*, L. R. 19 Eq. 501; *Bothamley v. Sherson*, L. R. 20 Eq. 304; *Loring v. Woodward*, 41 N. H. 391; *Wallace v. Wallace*, 23 N. H. 149; *Ford v. Ford*, 23 N. H. 212; *Ludlam's Estate*, 3 Pa. L. J. Rep. 332; *Gilmer's Legatees v. Gilmer's Ex'rs*, 42 Ala. 9; *Brainerd v. Cowdrey*, 16 Conn. 1; *Blackstone v. Blackstone*, 3 Watts, 335; 27 Am. Dec. 359; *Alsop's Appeal*, 9 Pa. St. 374; *Manning v. Craig*, 4 Pa. St. 436; 41 Am. Dec. 739; *McGuire v. Evans*, 5 Ired. Eq. 269; [*Tomlinson v. Bury*, 145 Mass. 346; 1 Am. St. Rep. 464; *Hood v. Haden*, 82 Va. 588; *Harvard Unitarian Soc. v. Tufts*, 151 Mass. 76.] A bequest of certain stock, *part of a larger amount owned by the testator*, is specific: *Morley v. Bird*, 3 Ves. 628; *Hosking v. Nicholls*, 1 Younge & C. Ch. 478; *Hill v. Hill*, 11 Jur., N. S., 806; but a bequest of money merely, *out of stock*, is general: *Ibid.*; *Kirby v. Potter*, 4 Ves. 748. *General gifts of stock*: On the other hand, where the bequest is merely *descriptive generally* of the stock, shares, etc., given, the legacy is not specific, although the testator may at the time own stock answering to the description, and even may own the exact number of shares given; e. g., as where he gives so much stock, or so many shares, and the like, *not using* additional words pointing to any identical shares, as "my" stock, or the stock which "I now possess," etc.: *Partridge v. Partridge*, Cas. t. Talbot, 226; *Wilson v. Brownsmith*, 9 Ves. 180; *Lambert v. Lambert*, 11 Ves. 607; *Johnson v. Johnson*, 14 Sim. 313; *Boys v. Williams*, 2 Russ. & M. 689; *Mullins v. Smith*, 1 Drew. & S. 204; *Robinson v. Addison*, 2 Beav. 515; *Bishop of Peterborough v. Mortlock*, 1 Brown Ch. 565; *Webster v. Hale*, 8 Ves. 410; *Fielding v. Preston*, 1 De Gex & J. 438; *Tift v. Porter*, 8 N. Y. 516. The reason is, that in all such cases the testator may mean that stocks, or shares, or securities of *such a kind and amount* are to be purchased and paid for out of his assets by the executor for the legatee; the bequest is there-

fore, in effect, the gift of a sum of money equivalent in value to the specified amount of stock, etc., and the legacy is strictly general. *Debts and evidences of debt*: Bequests of particular debts owing by named persons or otherwise identified, or of particular securities for the payment of money, or of the money due on them, are specific; e. g., notes, bonds, mortgages, a debt owing on a mortgage, and the like: *Chaworth v. Beech*, 4 Ves. 555; *Fryer v. Morris*, 9 Ves. 360; *Innes v. Johnson*, 4 Ves. 568; *Davies v. Morgan*, 1 Beav. 405; *Nelson v. Carter*, 5 Sim. 530; *Duncan v. Duncan*, 27 Beav. 386; *Sidebotham v. Watson*, 11 Hare. 170; *Walpole v. Apthorp*, L. R. 4 Eq. 37 (the amount due on a policy of life insurance); *Farnum v. Bascom*, 122 Mass. 282; *Titus v. McLanahan*, 2 Del. Ch. 200; *Gardner v. Printup*, 2 Barb. 83; *Stout v. Hart*, 6 N. J. Eq. 414; *Mellon's Appeal*, 46 Pa. St. 165; *Sparks v. Weedon*, 21 Md. 156; *Howell v. Hooks*, 4 Ired. Eq. 188; *Le Grice v. Finch*, 3 Mer. 50, which seems to be contrary, has been overruled; [see also *Georgia Infirmary v. Jones*, 37 Fed. Rep. 750; *Davis v. Crandall*, 101 N. Y. 311 (bequest of a portion of a note); *Hayes v. Hayes*, 45 N. J. Eq. 461; *Gelbach v. Shively*, 67 Md. 498 (a bequest of one thousand dollars "out of the portion or share of my father's estate that may come to me" is specific, and not demonstrative).] *Land*: As a devise of land is always specific: *Forrester v. Lord Leigh*, Amb. 171; *Mirehouse v. Scaife*, 2 Mylne & C. 695; *Hensman v. Fryer*, L. R. 3 Ch. 420; so the bequest of a lease or term of years is also specific: *Long v. Short*, 1 P. Wms. 403; *Fielding v. Preston*, 1 De Gex & J. 438; *Sampson v. Sampson*, L. R. 8 Eq. 479; *Farquhar v. Hadden*, L. R. 7 Ch. 1. *Residuary bequests*: A specific legacy may be included in a residuary bequest: *Mills v. Brown*, 21 Beav. 1; *Davies v. Fowler*, L. R. 16 Eq. 308; *Golder v. Littlejohn*, 30 Wis. 344. It will appear in the sequel that where a testator gives a bequest not of or a part of specific property, but the property is merely designated as the particular fund out of which the legacy is

the time of his death. In such case the legatee acquires a title to the article at the death, by virtue of the will, although the payment may be deferred, and must be obtained from the executor. Since his right of property is thus fixed, he is entitled to all income, profits, and proceeds arising or accruing on the article after the testator's death, and before its delivery or payment to himself.¹

§ 1131. **Ademption of Specific Legacies.**—Specific legacies are governed by certain rules which distinguish them from other kinds, and which determine the rights of the legatees with respect to them. Of these rules the most particular and distinctive is that of ademption.² Ademption is the taking away or removal of the legacy; or in other words, the extinguishment of it *as a legacy*, so that the legatee's rights under or claim to it are gone. The doctrine of ademption results from the very nature of a specific legacy as already defined. By its very nature as the gift of a specific, identified thing, operating as the mere gratuitous transfer of the thing without any *executory* obligation resting on the testator or his personal representatives, it follows that unless the very thing bequeathed is in existence at the death of the testator, and *then forms a part of his estate*, the legacy is wholly inoperative; the legatee has no right or claim; the executors are under no obligation to replace the thing by purchasing another one of the same kind as described in the will by means of other assets in their hands belong-

payable, such a legacy is or may be demonstrative, not specific; but where the testator deals with specific property belonging to himself, not by giving legacies or sums of money *out of* it, but by dividing and apportioning out the very property itself, or the proceeds of it if it is directed to be sold and converted into money, then the bequests of the parts thus apportioned among the legatees will be specific: *Page v. Leapingwell*, 18 Ves. 463; *Newbold v. Roadknight*, 1 Russ. & M. 677; *Elwes v. Causton*, 30 Beav. 554; *Walpole v. Apthorp*, L. R. 4 Eq. 37.

¹ A will operates upon a specific legacy somewhat in the manner of an assignment or transfer of property; it does not merely create a right of action in favor of the legatee against the testator: *Kirby v. Potter*, 4 Ves. 748, 751; *Jacques v. Chambers*, 2 Coll. C. C. 435, 440; *Loring v. Woodward*, 41 N. H. 391, 395; *Smith v. McKittrick*, 51 Iowa, 548.

² This word, derived from the Latin verb *adimere*, *ademptum*, literally signifies a taking away or removal of the legacy.

ing to the estate.¹ If the testator never had the article purported to be specifically bequeathed, or if he had it at the time of making the will, but has afterwards con-

¹Ashburner v. Macguire, 2 Brown Ch. 108; 2 Lead. Cas. Eq., 4th Am. ed., 600, 620-634, 662-674; Badrick v. Stevens, 3 Brown Ch. 431; Barker v. Rayner, 2 Russ. 122; Sidebotham v. Watson, 11 Hare. 170; Hayes v. Hayes, 1 Keen, 97; Gilliat v. Gilliat, 28 Beav. 481; Jones v. Southall, 32 Beav. 31; Ford v. Ford, 23 N. H. 212; Walton v. Walton, 7 Johns. Ch. 258; 11 Am. Dec. 456; Blackstone v. Blackstone, 3 Watts, 335, 337; 27 Am. Dec. 359; Ludlam's Estate, 1 Pars. Cas. 116; 13 Pa. St. 183; 3 Pa. L. J. Rep. 332; Philson v. Moore, 23 Hun, 152; and cases cited in the next note. Where the testator has actually used the thing, or has parted with it completely, so that neither the thing nor any of its proceeds remains in the estate at his death, there is clearly an ademption. The only questions of doubt or difficulty arise when the testator, having given some specific thing, or a thing described in some specific shape or condition, afterwards changes its shape, form, or condition, so that the very identical thing which he bequeathed no longer exists, although the proceeds thereof, or some other thing perhaps of the same kind substituted in its place, still remain, and form a portion of the testator's assets at his death; for example, having bequeathed a debt due from A, the debt is afterwards paid by A to the testator; or having bequeathed a certain mortgage given by A, the debt thus secured is afterwards paid by A and the mortgage is canceled; or, having bequeathed certain shares of stock in a named corporation, the testator sells those identical shares, but with the proceeds he buys other shares, either in the same or in another company, which he still owns at his death; or, having bequeathed the furniture in a certain specified house, the testator afterwards removes the furniture from that house, and puts it in some other place where it remains at the time of his death;—in all these instances, the corporeal thing (as the furniture) or the proceeds of the thing (as the money paid on the debt, mort-

gage, etc., or the shares of stock substituted) remain in the testator's estate at his death; yet there is *generally* an ademption, because the specific character of the thing given, as described in the bequest, is wholly lost. It should be observed, however, that such changes, in order to work an ademption, must be effected by the testator himself, or by his procurement, or with his knowledge and consent, or be afterwards assented to by him. If the changes should be effected by a fraud as against the testator, or without his knowledge or consent, expressed or implied from all the circumstances, then there would be no ademption which would operate to cut off the rights of the legatee. It is proper to notice, in this connection, certain legislation adopted in several of the states, and perhaps in most of them, of which sections 1301-1303 of the California Civil Code may be taken as the type. These sections, and the similar statutes of other states, provide that when property is specifically devised or bequeathed, the testator's *executory* agreement to sell it, or his charge or encumbrance put upon it, or his "conveyance, settlement, or other act" whereby *his interest* in the property is altered, but not wholly divested, shall not work a *revocation*.—that is, an ademption of the gift,—but the devisee or legatee shall still take the property subject to the rights of the third person thus created. These statutory provisions do not seem to interfere with the general doctrine concerning the ademption of specific legacies. The last of them, by its terms, applies only to a partial alteration *in the testator's interest* in the thing bequeathed; it does not apply to an alteration *in the nature or condition of the thing itself*, by which its specific character as described in the bequest is wholly changed. These settled doctrines concerning ademption seem to be untouched by these statutes; in fact, the statutes are merely declaratory of equitable rules with respect to the revocation of wills: See Beck v. McGillis, 9 Barb. 35.

sumed it, or used it, or sold, assigned, or otherwise parted with it, or if with his knowledge and consent its specific form and character have been wholly altered, so that the identical thing given by the will has ceased to exist, then the legacy is gone, extinguished, and the legatee's rights to it are destroyed. Whatever thus puts an end to the existence of the specific thing given by the will, so that at the testator's death it does not form a part of his estate, is an ademption of the legacy. There may be a partial as well as a total ademption, when a portion of the thing only remains in its original specific character among the testator's assets at his death.¹ The doctrine

¹ The following abstract will furnish illustrations of the doctrine, and will show circumstances under which an ademption does or does not take place. Where the thing bequeathed formed no part of the testator's estate at the date of the will or at his death: *Gordon v. Duff*, 3 De Gex, F. & J. 662; where the thing, debt, security, stock, etc., has been totally or partly sold, transferred, or otherwise disposed of by the testator before his death, there is an ademption total or partial; and this result is the same even though with the proceeds of the thing sold — say stock, and the like — he purchases others of the same kind which he holds at his death. If the testator, having sold shares of stock, should repurchase the same identical shares, perhaps there would be no ademption: See the English cases cited in the last preceding note, and also *In re Gibson*, L. R. 2 Eq. 669; *Oliver v. Oliver*, L. R. 11 Eq. 506; *Watts v. Watts*, L. R. 17 Eq. 217; *Macdonald v. Irvine*, L. R. 8 Ch. Div. 101; *Castle v. Fox*, L. R. 11 Eq. 542, 551; *Miles v. Miles*, L. R. 1 Eq. 462; *Douglas v. Douglas*, Kay, 400, 404; *Drinkwater v. Falconer*, 2 Ves. Sr. 623, 625; *Partridge v. Partridge*, Cas. t. Talb. 226; *Philson v. Moore*, 23 Hun, 152; *Newcomb v. Trustees of St. Peter's Ch.*, 2 Sand. Ch. 636; *Langdon v. Astor's Ex'rs*, 16 N. Y. 9, 37; *Blackstone v. Blackstone*, 3 Watts, 335; 27 Am. Dec. 359; *Alsop's Appeal*, 9 Pa. St. 374; *Whitlock v. Vaun*, 38 Ga. 562. Again, where a particular debt, or the security for a debt, such as a mortgage, bond, or

note, or a public debt secured by governmental bonds or other governmental security, has been specifically bequeathed, and the same has been paid to the testator, so that *the debt is discharged*, there is an ademption; and it is wholly immaterial whether the payment is voluntary on the part of both creditor and debtor, or has been compelled by the creditor, or has been compelled by the debtor by operation of law, as in case of a public debt paid off pursuant to statute. The distinction between a voluntary and a compulsory payment in such case has been entirely abrogated. The result is the same whether the proceeds are mingled up with other moneys of the testator, or are invested by him in other securities, even in those of the same kind as the original, which are retained by him until his death: *Innes v. Johnson*, 4 Ves. 568, 574; *Gardner v. Hatton*, 6 Sim. 93; *Sidney v. Sidney*, L. R. 17 Eq. 65; *Harrison v. Jackson*, L. R. 7 Ch. Div. 339; *In re Lane*, L. R. 14 Ch. Div. 856 (exercising an option and surrendering up the stock bequeathed and accepting an entirely different stock of the same company in lieu thereof); *Ludlam's Estate*, 3 Pa. L. J. Rep. 332; 1 Pars. Cas. 116; 13 Pa. St. 188; *Cuthbert v. Cuthbert*, 3 Yeates, 486; *Walton v. Walton*, 7 Johns. Ch. 258; 11 Am. Dec. 456; *Beck v. McGillis*, 9 Barb. 35; [Georgia Infirmary v. Jones, 37 Fed. Rep. 750.] Again, where a specific bequest is made of goods *situated or being in or at a particular place*, a removal of them to another place by the act or consent

of ademption does not apply to demonstrative legacies, since they are payable out of the general assets if the

of the testator will, in general, operate as an ademption, since it destroys the specific character of the thing as bequeathed: *Green v. Symonds*, 1 Brown Ch. 129, note; *Heseltine v. Heseltine*, 3 Madd. 276; *Colleton v. Garth*, 6 Sim. 19; *Spencer v. Spencer*, 21 Beav. 548; *Blagrove v. Coore*, 27 Beav. 138. Put there are important exceptions. No ademption is produced by a removal merely for purposes of use by the testator: *Land v. Devaynes*, 4 Brown Ch. 537; or for purpose of repair: *Lord Brooke v. Earl of Warwick*, 2 De Gex & S. 425; or for purpose of safe custody: *Domville v. Taylor*, 32 Beav. 604; or for purpose of preservation from fire: *Chapman v. Hart*, 1 Ves. Sr. 271, 273. If articles specifically bequeathed are destroyed by fire during testator's lifetime, the legatee is not entitled to their insurance money: *Durrant v. Friend*, 5 De Gex & S. 343. A wrongful removal, or conversion of the form, or change in the nature of goods or funds specifically bequeathed, done without the procurement, or knowledge, or consent of the testator, and in order to cut off the legatee, will not operate as an ademption, nor destroy his rights: *Shaftsbury v. Shaftsbury*, 2 Vern. 747; *Domville v. Taylor*, 32 Beav. 604. For a like reason, if a testator becomes insane after making his will, the acts of persons having no lawful authority to deal with his property, which interfere with specific bequests, will not affect the rights of the specific legatees: *Taylor v. Taylor*, 10 Hare, 475; *Jenkins v. Jones*, L. R. 2 Eq. 323; but it seems that the acts of those who are lawfully appointed as representatives of the insane testator produce the same effect as the acts of the testator himself; where shares specifically bequeathed by a testator who was afterwards judicially found to be a lunatic, and a committee appointed, were ordered by the court to be sold, an ademption was wrought: *Jones v. Green*, L. R. 5 Eq. 555; [*Freer v. Freer*, 22 Ch. Div. 622]; and payment of a debt bequeathed, to the committee of the testator, works an ademption: *Hoke v. Herman*, 21 Pa. St. 301. *Acts which do not work an ademption*: While an actual transfer

by the testator amounts to an ademption, there is no ademption where stock standing in the name of trustees for the testator at the date of the will was afterwards simply transferred into the testator's own name: *Dingwell v. Askew*, 1 Cox, 427; *Lee v. Lee*, 27 L. J. Ch. 824; *Moore v. Moore*, 29 Beav. 496; nor where stock has been mortgaged by the testator: *Ashburner v. Macguire*, 2 Brown Ch. 108, 113; *Knight v. Davis*, 3 Mylne & K. 358; or pledged by him; but, on the contrary, the executors should redeem it: *Bothamley v. Sherson*, L. R. 20 Eq. 304; nor where the fund bequeathed has been changed by an agent of the testator without his authority: *Basan v. Brandon*, 8 Sim. 171; or changed by a corporation, as where common shares in a railway company were converted by the action of the company into consolidated stock: *Oakes v. Oakes*, 9 Hare, 666. The same general limitation extends to payment of a debt specifically bequeathed. While a payment which *discharges the debt* operates as an ademption, there is no ademption where the payment is *merely one in form*, where the original debt is left remaining, and there is nothing but a *new investment of the same debt*, or a mere change in the form of the security, leaving the same debt still existing: *Morgan v. Thomas*, L. R. 6 Ch. Div. 176; *In re Johnstone's Settlement*, L. R. 14 Ch. Div. 162; *Ford v. Ford*, 23 N. H. 212; *Havens v. Havens*, 1 Sand. Ch. 324; *Gardner v. Printup*, 2 Barb. 83, 88, 93; *Doughty v. Stillwell*, 1 Bradf. 300, 309; *Stout v. Hart*, 6 N. J. Eq. 414, 418. There appears to be some slight tendency in some of the American cases not to press the doctrine of ademption, and to favor the claims of the legatee, although the doctrine of the English courts is avowedly adopted. In a few cases, following some early Massachusetts decisions, it has been held that ademption is a matter of actual intention, and the result might be defeated by extrinsic evidence of the testator's real intention. The more recent cases are unanimous against this departure from the true doctrine. An ademption which would otherwise have taken place may

fund out of which they are primarily payable fails. Nor does it apply to general or pecuniary legacies. The "satisfaction" of general legacies, which is sometimes improperly called their "ademption," depends upon entirely different principles, and should not be confounded with ademption proper of specific legacies.¹ They may, of course, be a "revocation" of demonstrative and of general legacies.

§ 1132. **General Legacies.**—The term "general" legacies comprises all those which are not either specific or demonstrative,—that is, those which are not gifts of some identical article or fund forming part of the testator's estate, nor gifts of a sum payable out of such an identified fund. They are, therefore, rather gifts of *amounts* than of things or pieces of property specially described and identified. Since all general legacies are, in their legal effect, equivalent to gifts of money equal in amount to the value of the thing actually described in the bequest, the term "pecuniary" is also sometimes used as synonymous with "general."² Gifts of sums of money, the amounts of which only are stated, are always general; as, for example, "I bequeath to A B five hundred dollars." A gift of any chattel or chattels—as a white horse, or furniture, or goods, or of any kind of securities,

always be prevented by the testator's express language in his will declaring, in substance, that the legatee is to have the proceeds of the debt if paid, or of the stock or other things if sold, and the like. Such a provision in fact amounts to a gift of a fund to be acquired in future: *Earl of Thomond v. Earl of Suffolk*, 1 P. Wms. 461; *Clark v. Browne*, 2 Smale & G. 524; *Spencer v. Higgins*, 22 Conn. 521; *Langdon v. Astor's Ex'rs*, 3 Duer, 477; *Gardner v. Printup*, 2 Barb. 83, 88; *Doughty v. Stillwell*, 1 Bradf. 300, 309; *Corbin v. Mills's Ex'rs*, 19 Gratt. 438. In order that a specific thing bequeathed may pass by a will, it must belong to the testator at his death, and therefore stocks which were directed to be purchased, but which were not purchased, will not pass by

a bequest in general terms of all his stock: *Thomas v. Thomas*, 27 Beav. 537; but stocks would pass under such a gift which had actually been purchased, although not yet delivered or not fully transferred on the corporation books at the time of the death: *Ellis v. Eden*, 25 Beav. 482; *Field v. Peckett*, 29 Beav. 573, 575.

¹ As to "satisfaction" of general legacies, see vol. 1, §§ 520–526, 544–564. As to demonstrative legacies, see *Mann v. Copland*, 2 Madd. 223; *Vickers v. Pound*, 6 H. L. Cas. 885, and *post*, §§ 1133, 1138.

² "Pecuniary legacies" are therefore "general legacies." The term is not, however, strictly accurate as descriptive of a class, since specific legacies may be, and often are, gifts of nothing but money.

such as shares in any stock, or governmental bonds, and the like — *may* be general, and *will* be general, even though the testator owns at the time articles of the same kind, or even owns an article precisely answering to the description, unless the language of the bequest describes and certainly points out as *the* thing given some identical article, horse, furniture, goods, or some identical shares of stocks, bonds, or fund, existing as a part of the testator's estate.¹ The peculiar effect of a general legacy is, that, instead of operating as a voluntary assignment of the identical thing to the legatee, and so taking effect only when the specific thing or fund remains in existence as a part of the testator's estate, it creates an obligation resting upon the executor to pay to the legatee the amount specified, if there are sufficient assets left in the estate. It takes effect, therefore, and creates a right in the legatee to the payment, if there are sufficient assets,

¹ *Ashburner v. Macguire*, 2 Lead. Cas. Eq., 4th Am. ed., 605-612, 646-652; *Fielding v. Preston*, 1 De Gex & J. 438; *Macdonald v. Irvine*, L. R. 8 Ch. Div. 101; *Hawthorn v. Shedden*, 3 Smale & G. 293; *Fairer v. Park*, L. R. 3 Ch. Div. 309; *Tift v. Porter*, 8 N. Y. 516; *Bliven v. Seymour*, 83 N. Y. 469; *Pearce v. Billings*, 10 R. I. 102; *Parker's Ex'rs v. Moore*, 25 N. J. Eq. 228; *Harper v. Bibb*, 47 Ala. 547; *Gilmer's Legatees v. Gilmer's Ex'rs*, 42 Ala. 9; *Randle v. Carter*, 62 Ala. 95; *Brown v. Grimes*, 60 Ala. 647; *Scotfield v. Adams*, 12 Hun, 366; *England v. Vestry of Prince George's Parish*, 53 Md. 466; *Osborne v. McAlpine*, 4 Redf. 1; *Enders v. Enders*, 2 Barb. 362; *Corbin v. Mills's Ex'rs*, 19 Gratt. 438; *Davis v. Cain's Ex'r*, 1 Ired. Eq. 304; [see also *Robertson v. Broadbent*, 8 App. Cas. (H. L.) 812; affirming same case *sub nom.* *Broadbent v. Barrow*, 20 Ch. Div. 676; *Miller v. Cooch*, 5 Del. Ch. 161;] that a gift of so much stock, etc., is general, although the testator at the time owns the same kind, or even the very same amount, in the absence of further descriptive and identifying language, see *ante*, cases cited in note 1 under § 1130; but see *Kunkel v. Macgill*, 56 Md. 120, in which, under the special cir-

cumstances, such a legacy was held to be specific. A gift of a specified amount or sum of money is none the less general because the testator may add the particular purpose for which he makes the bequest; as, to buy a ring: *Apreece v. Apreece*, 1 Ves. & B. 364; or to purchase an annuity: *Gibbons v. Hills*, 1 Dick. 324; or land: *Hinton v. Pinke*, 1 P. Wms. 359; or stock: *Edwards v. Hall*, 11 Hare, 1, 23. "If a testator leaves a legacy absolutely as regards his estate, but restricts the mode of the legatee's enjoyment of it, to secure certain objects for the benefit of the legatee, upon failure of such objects, so that the prescribed mode of enjoyment become impossible, then the absolute gift prevails; but if there be no absolute gift as between the legatee and the estate, but particular modes of enjoyment are prescribed, and those modes of enjoyment fail, the legacy forms part of the testator's estate, as not having in such event been given away from it": *Lassence v. Tierney*, 1 Macn. & G. 551, 561, 562, per Lord Cottenham; *Kellett v. Kellett*, L. R. 3 H. L. 160, 169; *Campbell v. Brownrigg*, 1 Phill. Ch. 301; *Churchill v. Churchill*, L. R. 5 Eq. 44; *Palmer v. Flower*, L. R. 13 Eq. 250.

even though the particular thing, fund, stock, or security mentioned in the bequest is not left existing as a part of the testator's estate at his death, and even though it had never belonged to the testator during his lifetime. If the assets are not sufficient to pay the legacy in full, the legatee is entitled to a ratable portion thereof. This obligation, or executory right of the legatee, created by a general legacy, renders it in this respect much more advantageous to him than the specific legacy. For this reason it is an established rule of construction of wills to lean strongly in favor of an interpretation which makes a legacy general rather than specific.¹

§ 1133. **Demonstrative Legacies.** — Demonstrative legacies are a peculiar kind which partake of the nature of both specific and general legacies, and combine the advantages of each. Demonstrative legacies are bequests of sums of money, or of quantity or amounts having a pecuniary value and measure, not in themselves specific, but made payable *primarily* out of a particular designated fund or piece of property belonging, or assumed to belong, to the testator.² Their effect is peculiar. Although

¹ Where the language is at all doubtful, the courts will always hold a legacy to be general rather than specific, if the terms of the bequest will admit of that interpretation: *Tift v. Porter*, 8 N. Y. 516; *Norris v. Ex'rs of Thomson*, 16 N. J. Eq. 222, 542; and see cases in last preceding note.

² In *Robinson v. Geldard*, 3 Macn. & G. 735, 744, 745, Lord Truro, quoting the definition of Mr. Justice Williams, said: "A legacy of quantity is ordinarily a general legacy; but there are legacies of quantity in the nature of specific legacies, as of so much money with reference to a particular fund for payment; this kind of legacy is called by the civilians a demonstrative legacy, and it is so far general, and differs so much in effect from one properly specific, that if the fund be called in or fail, the legatee will not be deprived of his legacy, but be permitted to receive it out of the general assets; yet the legacy is so far specific that it will not be liable to abate with general

legacies upon a deficiency of assets." See also *Tempest v. Tempest*, 7 De Gex, M. & G. 470, 473, per Lord Cranworth. In *Paget v. Huish*, 1 Hem. & M. 663, 668, the testator gave five annuities for various amounts, describing them, and added: "I declare that each of the said five annuities shall be paid out of the rents of my real estate hereby devised, half-yearly." Held, demonstrative. Page Wood, V. C., after defining "general" and "specific" legacies, added: "The third class is intermediate to these, where a legacy or annuity is, as it is termed, demonstrative, there being a clear general gift, but a particular fund pointed out as that which is to be primarily liable, on failure of which the general personal estate remains liable." In *Giddings v. Seward*, 16 N. Y. 365, the will said: "I give unto Antha Seward the sum of twelve hundred dollars and interest on the same, contained in a bond and mortgage given to me by O. W. S., dated," etc. The

made primarily payable out of a particular fund, these legacies do not fail — are not adeemed — because such fund may not exist as a part of the testator's estate at his death, but they are then payable out of his general assets, like general legacies. On the other hand, if such particular fund is in existence as a part of the testator's estate at his death, they are not liable to abatement in common with general legacies, but are entitled to payment under the circumstances in exactly the same manner as true specific legacies.¹

bond and mortgage referred to was for the payment of twelve hundred dollars and interest in ten years from its date. Held, a demonstrative legacy, and not adeemed by assignment, or payment, or other extinguishment of the bond and mortgage during the testator's lifetime. See also *Gillaume v. Adderley*, 15 Ves. 384; *Campbell v. Graham*, 1 Russ. & M. 453; *Vickers v. Pound*, 6 H. L. Cas. 885; *Gordon v. Duff*, 3 De Gex, F. & J. 662; *Disney v. Crosse*, L. R. 2 Eq. 592; *Hodges v. Grant*, L. R. 4 Eq. 140; *Mytton v. Mytton*, L. R. 19 Eq. 30; *Pierrepont v. Edwards*, 25 N. Y. 128; *Florence v. Sands*, 4 Redf. 206; *Manice v. Manice*, 1 Lans. 348; *Enders v. Enders*, 2 Barb. 362; *Armstrong's Appeal*, 63 Pa. St. 312; *Knecht's Appeal*, 71 Pa. St. 333; *Gallagher v. Gallagher*, 6 Watts, 473; *Corbin v. Mills's Ex'rs*, 19 Gratt. 438; *Smith v. Lampton*, 8 Dana, 69; *Snow v. Foley*, 119 Mass. 102; [*Morris v. Garland's Adm'r*, 78 Va. 215; *Bradford v. Brinley*, 145 Mass. 81; *Tichenor v. Tichenor*, 41 N. J. Eq. 39.] In this class the bequest is not of or of a part of specific property, so as to operate as an assignment of that specific property, but the property is simply pointed out, *demonstrated*, as a particular fund, out of which it is payable. The following are examples of what bequests are thus demonstrative: Gifts of specified sums or amounts payable out of a mass of property real or personal: *Savile v. Blacket*, 1 P. Wms. 777; *Disney v. Crosse*, L. R. 2 Eq. 592; gifts of a particular sum out of or from a specified amount of stock: *Kirby v. Potter*, 4 Ves. 745; *Attwater v. Attwater*, 18

Beav. 330; [*Ives v. Canby*, 48 Fed. Rep. 718;] or out of or a share of the capital employed in a certain business: *Sparrow v. Josselyn*, 16 Beav. 135; *Bevan v. Att'y-Gen.*, 4 Giff. 361; a bequest of money now vested in particular bonds or securities: *Gillaume v. Adderley*, 15 Ves. 384; or of a sum to be paid by and out of moneys due to the testator on a bond or other security: *Roberts v. Pocock*, 4 Ves. 150; *Acton v. Acton*, 1 Mer. 178; *Smith v. Fitzgerald*, 3 Ves. & B. 2.

¹ If the particular fund fails in whole or in part, or ceases to exist as a part of the estate, the demonstrative legacies then become in all respects like general legacies, and are payable out of the general assets, in full if such assets are sufficient, ratably if insufficient. If the fund continues in existence and is sufficient, then the demonstrative legacies are not liable to abatement with the general legacies; but like specific legacies, they are payable in full in preference to the general legacies, even though the latter wholly fail. They plainly possess the advantages and are free from the defects belonging to each of those kinds: *Mann v. Copland*, 2 Madd. 223; *Vickers v. Pound*, 6 H. L. Cas. 885; *Mullins v. Smith*, 1 Drew. & S. 204, 210; *Acton v. Acton*, 1 Mer. 178; *Paget v. Huish*, 1 Hem. & M. 663; *Armstrong's Appeal*, 63 Pa. St. 312; *Welch's Appeal*, 28 Pa. St. 363; *Walls v. Stewart*, 16 N. J. Eq. 275, 281; *Giddings v. Seward*, 16 N. Y. 365; *Pierrepont v. Edwards*, 25 N. Y. 128; *Newton v. Stanley*, 23 N. Y. 61; *Manice v. Manice*, 1 Lans. 348; and cases in last preceding note.

§ 1134. **Annuities.**—An annuity, when given by will, is the bequest of some certain specified amount of money to be paid at prescribed recurring intervals of time during some period, which may be any definite number of years, or for life, or perpetual.¹ When an annuity is given *simpliciter*,—that is, given to the annuitant without specifying its duration,—it is for life, and not perpetual.² The mere gift of the interest on a certain sum of money is not an annuity.³ An annuity may be given in general terms, so as to be payable out of the general assets of the estate. It is then a “general” legacy, governed by all the rules applicable to that kind of legacy, and subject to abatement with them.⁴ It is ordinarily, however, made payable out of some designated fund; as, for example, out of certain stock, or the interest arising from certain mortgages, or the rents and profits of certain lands. Such an annuity is in all respects a “demonstrative” legacy, and is governed by the rules regulating that species of legacies.⁵

§ 1135. **Abatement of Legacies.**—The order in which the different kinds of property and funds belonging to an estate should be appropriated in the payment of debts, legacies, and other claims may, of course, be determined by the testator, and these directions contained in his will are followed in the final settlement and distribution. In the absence of any such directions by the testator, courts of equity have adopted certain fundamental principles, and have established a certain order

¹ In construing a will, annuities will, as a general rule, be comprised within the word “legacies”: *Duke of Bolton v. Williams*, 4 Brown Ch. 297; *Sibley v. Perry*, 7 Ves. 522, 534; *Swift v. Nash*, 2 Keen, 20; thus where “legacies” are directed to be paid out of real estate, an annuity will also be included: *Mullins v. Smith*, 1 Drew. & S. 204, 211.

² *Yates v. Maddan*, 3 Macn. & G. 532; *Lett v. Randall*, 2 De Gex, F. & J. 388; *Kerr v. Middlesex Hospital*, 2 De Gex, M. & G. 576, 583.

³ *Whitson v. Whitson*, 53 N. Y. 479.

⁴ *Alton v. Medicot*, cited 2 Ves. Sr. 417; [*Emery v. Batchelder*, 78 Me. 233.]

⁵ *Mann v. Copland*, 2 Madd. 223; *Paget v. Huish*, 1 Hem. & M. 663; *Attwater v. Attwater*, 18 Beav. 330; *Pierrepoint v. Edwards*, 25 N. Y. 128; [*Additon v. Smith*, 83 Me. 551.] For further particulars concerning annuities, see 2 Lead. Cas. Eq., 4th Am. ed., 613–619.

upon the basis of these principles, by which the rights of all claimants upon the estate, as among themselves, are to be finally settled, and in accordance with which the estate is to be applied in the discharge of their claims. These fundamental principles may be stated as follows: Creditors are entitled to be paid in full out of all assets subject to their debts, in preference to all mere volunteers, whether heirs, next of kin, legatees, or devisees.¹ In the absence of contrary directions in the will, the personalty is the primary fund for the payment of debts and legacies. Property undisposed of by the will is primarily liable in preference to that which is expressly bequeathed or devised. By applying these principles, in combination with the general classes of directions which the testator *may* prescribe, the order has been established as given in the foot-note.²

¹ In the states of this country, and at present in England, the land of the deceased testator or intestate is an asset liable for his debts.

² This order has been modified to a greater or less extent by the statutes of various states. It forms, however, the *basis* of the legislation, and its fundamental principles have been *substantially* followed in the statutory system of most of the states which have legislated on the subject. In a few, — as, for example, in California, — all discrimination between real and personal property has been practically abrogated. So far as the statutes have not interfered, the principles and order established by the court of chancery have been followed by the American courts: See *Hoover v. Hoover*, 5 Pa. St. 351; *Armstrong's Appeal*, 63 Pa. St. 312. The true meaning of the doctrine involved in this order should not be misapprehended. It furnishes a rule by which the rights of claimants and of those entitled to the different classes of funds, *as among themselves*, are to be adjusted in the final apportionment and distribution of the whole estate. It does not necessarily and under all circumstances compel creditors or legatees to resort to the various classes of funds in the order laid down for the satisfaction of their de-

mands. On the contrary, so far as the rights of creditors are alone concerned, *all the classes of funds* are in general liable; and so far as the rights of general legatees are alone concerned, several of the classes are certainly liable. The doctrine simply means that whenever subsequent classes of funds (e. g., the fourth or fifth) have been appropriated for the payment of debts or legacies which are primarily chargeable upon prior classes (e. g., the first, second, or third), so that the persons properly entitled to those subsequent classes would be disappointed, then such disappointed claimants may have the assets composing those prior classes of funds *marshaled* in their own favor, — in other words, they then become entitled to resort to those prior classes (first, second, or third, as the case may be) for the satisfaction of their own demands which were otherwise primarily chargeable upon the subsequent classes (the fourth or fifth). In this manner the doctrine secures, as far as possible, the *equitable* rights of all classes of claimants upon the estate, and for an equitable appropriation of all the classes of funds of which it is composed. The order in which the different classes of assets are to be appropriated and administered, so as

§ 1136. **Nature of Abatement.**—“Abatement” literally means a subtraction from the legacy, so that the full amount given by the will is not actually received by the legatee. It assumes that the total estate left by the testator is not sufficient to pay all the debts and other charges upon it, and all of the gifts which he has made in the will. If the estate is sufficient for both these purposes, there can be no place for any diminution of legacies or devises. When all the expenses and charges and debts have been paid or provided for, and there are not as-

to secure, if possible, the equitable rights of all claimants, creditors, and volunteers, is the following: 1. The general personal property not disposed of at all by the will, or only disposed of by being included in the residuary clause: *Davies v. Topp*, 1 Brown Ch. 524, 526; *Duke of Ancaster v. Mayer*, 1 Brown Ch. 454. It should be noticed that a disposition of the “residue,” in the residuary clause, does not change the nature of the personal property included in it, — does not make it different from that which is not disposed of at all; *for there really is no residue until all the debts and all the legacies mentioned have been paid*. See *Lyne's Estate*, L. R. 8 Eq. 482. 2. Real estate expressly devised to be sold for the payment of debts, and not merely charged with the payment of debts: *Lanoy v. Duke of Athol*, 2 Atk. 444; *Davies v. Topp*, 1 Brown Ch. 524, 527; *Harmood v. Oglander*, 8 Ves. 106, 124, 125; *Manning v. Spooner*, 3 Ves. 114, 117; *Phillips v. Parry*, 22 Beav. 279. 3. Real estate descending to the heir, not charged with debts: *Davies v. Topp*, *supra*; *Harmood v. Oglander*, *supra*; *Row v. Row*, L. R. 7 Eq. 414; [*Hope v. Wilkinson*, 14 Lea, 21; 52 Am. Rep. 149.] 4. Real estate devised and personal property specifically bequeathed charged with the payment of debts; that is, specifically given to devisees or legatees subject to the payment of debts: *Harmood v. Oglander*, *supra*; *Barnewell v. Lord Cawdor*, 3 Madd. 453; *Irvin v. Ironmonger*, 2 Russ. & M. 531; *Wood v. Ordish*, 3 Smale & G. 125; *Harris v. Watkins*, Kay, 438. 5. General pecuniary legacies, or, to speak more accurately, the personal property which

would otherwise be needed to pay the general legacies. All the property of this class must contribute ratably. 6. Real estate devised, not charged with debts, including the real estate embraced in a residuary devise, since every devise of land is essentially specific, and personal property specifically bequeathed; that is, articles or funds given as specific legacies. These kinds of property, being specifically given, stand on the same footing, and they all contribute ratably with each other in case of a deficiency; as to lands, see *Hensman v. Fryer*, L. R. 3 Ch. 420; 2 Eq. 627; *Gibbins v. Eyden*, L. R. 7 Eq. 371; *Collins v. Lewis*, L. R. 8 Eq. 708; *Pearmain v. Twiss*, 2 Giff. 130; as to legacies, see *Long v. Short*, 1 P. Wms. 403; *Tombs v. Roch*, 2 Coll. C. C. 490; *Gervis v. Gervis*, 14 Sim. 654; *Young v. Hassard*, 1 Jones & L. 466, 472; *Fielding v. Preston*, 1 De Gex & J. 438; of course, one kind may be made primarily liable by the will: *Bateman Hotchkin*, 10 Beav. 426. [A few cases hold that specific legacies are liable before specific devises: See *McFadden v. Hefley*, 28 S. C. 317; 13 Am. St. Rep. 675; and see 2 *Jarman on Wills*, Perkins's ed. (547, 547), 391, 392; but the great weight of authority supports the rule as given above: *Maybury v. Grady*, 67 Ala. 147, 159, per Stone, J.; *Cramer v. McSwords*, 24 W. Va. 594.] 7. Property which the testator appoints, under a general power of appointment, in favor of volunteers: *Thompson v. Towne*, 2 Vern. 319; *Bainton v. Ward*, 2 Atk. 172; *Fleming v. Buchanan*, 3 De Gex, M. & G. 976; *Hawthorn v. Shedden*, 3 Smale & G. 293, 305; In re *Davies's Trusts*, L. R. 13 Eq. 163.

sets enough left to pay all the legacies and devises in full, plainly there must be some subtraction from the amounts specified in the will. Does this abatement extend to all alike? or are some entitled to a preference over others? Must *all* be diminished by a *pro rata* deduction? or must the abatement be first applied to a certain class, even so far as to wholly absorb and extinguish it if necessary, before resort is made to another and more favored class? There is such a preference based upon the distinction between *specific* gifts — legacies and devises — and those which are general. The doctrine of “abatement” determines the priority among the classes, and the order in which the necessary subtraction must be made, so that the preferred class shall not be abated until the assets appropriate for the legacies of the inferior class have been exhausted; and it also determines the rule by which all the legacies of the same class, as between themselves, shall be reduced, whenever a deficiency of assets occurs. This latter rule is a striking application of the maxim, Equality is equity.¹

§ 1137. **Abatement of Specific Legacies.** — Among legacies, the specific constitute the preferred class. Specific legacies do not abate in common with general legacies; they only abate if the deficiency of assets is so great as to render a resort to them necessary when the fund representing the general legacies is exhausted. Whenever it becomes necessary to resort to the class composed of the specific legacies and devises, all the legacies and devises in that class will abate *pro rata*. Specific legacies and devises stand upon the same footing, are subject to the same liability, are abated together under the same circumstances, and contribute ratably for the payment of debts and charges.²

¹ See *ante*, vol. 1, § 411.

² Long v. Short, 1 P. Wms. 403; Sleech v. Thorington, 2 Ves. Sr. 560, 561, 564; Page v. Leapingwell, 18 Ves. 463; Harley v. Moon, 1 Drew. & S. 623; Wright v. Weston, 26 Beav. 429;

Fielding v. Preston, 1 De Gex & J. 438; Walpole v. Apthorp, L. R. 4 Eq. 37; Powell v. Riley, L. R. 12 Eq. 175; In re Jeffery's Trusts, L. R. 2 Eq. 68; Gilmer's Legatees v. Gilmer's Ex'rs, 42 Ala. 9; Lightfoot v. Lightfoot's

§ 1138. **Abatement of Demonstrative Legacies.**—If the fund out of which they are primarily made payable exists as a part of the testator's estate at his death, demonstrative legacies are governed by the same rules as specific legacies, and abate only with them *ratably*; but if the fund does not so exist, they become, in effect, general legacies, and must contribute *pro rata* with all the other general legacies.¹

§ 1139. **Abatement of General Legacies.**—The rule is settled, that, with one or two particular exceptions, and in the absence of a contrary intention expressed by the testator, *all* general legacies are liable to be abated to the extent of complete obliteration, in order to pay the debts in full, before resort is had to the specific legacies and devises, if the deficiency of assets is so great as to require such an entire appropriation of the funds otherwise applicable to the payment of these legacies. When the deficiency is only partial, so that a complete abatement is unnecessary, all the general legacies must contribute *ratably*; in other words, they are all subject to a *pro rata* abatement. General annuities stand upon the same footing, and abate *pari passu* with other general legacies.²

Ex'r, 27 Ala. 351; Bevan v. Cooper, 7 Hun, 117; Bonham v. Bonham, 33 N. J. Eq. 476; Towle v. Swasey, 106 Mass. 100; Brainerd v. Cowdrey, 16 Conn. 1, 498; Nash v. Smallwood, 6 Md. 394; Alexander v. Worthington, 5 Md. 471; Armstrong's Appeal, 63 Pa. St. 312.

¹ Mullins v. Smith, 1 Drew. & S. 204, 210; Acton v. Acton, 1 Mer. 178; Armstrong's Appeal, 63 Pa. St. 312; Manice v. Manice, 1 Lans. 348; Florence v. Sands, 4 Redf. 206; and see cases cited *ante*, under § 1133. When annuities are demonstrative, they are, of course, governed by the same rule.

² This general doctrine is accurately stated in Titus's Adm'r v. Titus, 26 N. J. Eq. 111, as follows: "The rule in regard to bequests in the form of general legacies and of pure bounty, where there are no expressions in the will, or inferences to be drawn therefrom, manifesting an intention to give them priority, is, that in the event

of an insufficiency of assets to pay them in full, they shall abate *ratably*. Neither the relationship of certain legatees to the testator, nor a provision against lapse of the legacies, nor a direction that all the legacies shall be paid 'in the order in which they are stated in the will, and out of the first moneys that shall come into the executor's hands after payment of debts and funeral expenses,' where the will shows that the testator contemplated a residue after payment of all the legacies in full, constitutes any ground for preference." The doctrine is also concisely expressed in the very recent case of Appeal of Trustees of the University of Pennsylvania, 97 Pa. St. 187: "Where there is a deficiency after payment of debts, expenses, and specific legacies, the loss shall be borne entirely and proportionally by pecuniary legacies which are in their nature general. A general legacy to

§ 1140. **Limitations — Intention of the Testator.**—This doctrine, although nearly universal, may still be overcome by a contrary intention of the testator plainly expressed in the will. If a testator uses language sufficiently showing an intention that a certain legacy or legacies otherwise general shall have preference, and be paid in full before the others, and not abate *pro rata* with them, such intention will be carried out, and the legacy or legacies will be preferred, although general.¹ Some

a volunteer will not be entitled to any exemption from abatement on the ground of its being applied to any particular object, as a bequest to a wife or child, or charity. Where, however, there is a valuable consideration for a testamentary gift, such legacy is entitled to a preference over those which are mere bounties. Although a testator may exempt a legacy from abatement at the expense of the others, yet among legacies which are in their nature mere bounties, the presumption of intended equality exists and governs, unless overcome by unequivocal evidence to the contrary." See also *Miller v. Huddleston*, 3 Macn. & G. 513; *Thwaites v. Foreman*, 1 Coll. C. C. 409; *Brown v. Brown*, 1 Keen, 275; *Coore v. Todd*, 7 De Gex, M. & G. 520; *Farrer v. St. Catharine's College*, L. R. 16 Eq. 19; *Hensman v. Fryer*, L. R. 3 Ch. 420; *Bonham v. Bonham*, 33 N. J. Eq. 476; *Osborne v. McAlpine*, 4 Redf. 1; *Alsop v. Bowers*, 76 N. C. 168; *Bliven v. Seymour*, 88 N. Y. 469.

¹ *Lewin v. Lewin*, 2 Ves. Sr. 415; *Marsh v. Evans*, 1 P. Wms. 668; *Att'y-Gen. v. Robins*, 2 P. Wms. 23; *Beeston v. Booth*, 4 Madd. 161, 170; *Stammers v. Halliley*, 12 Sim. 42; *Brown v. Brown*, 1 Keen, 275; *Haynes v. Haynes*, 3 De Gex, M. & G. 590; *McLean v. Robertson*, 126 Mass. 537; *Bancroft v. Bancroft*, 104 Mass. 226; *Appeal of Trustees of the University of Pennsylvania*, 97 Pa. St. 187; [*Wells v. Borwick*, 17 Ch. Div. 798.] But this intention must be clear; there will be no deviation from the general rule, where the testator has left it doubtful whether he intended to give such a preference: *Blower v. Morret*, 2 Ves. Sr. 420;

Beeston v. Booth, *supra*; *Eavestaff v. Austin*, 19 Beav. 591; *Appeal of Trustees of the University of Pennsylvania*, *supra*; [*Additon v. Smith*, 83 Me 551.]

A general legacy acquires no preference over others of the same class, and no exemption from the liability of abatement *pro rata* with all the others, from the fact that the will directs it to be paid at once, or to be paid out of the first moneys in the executor's hands, or that the legacies should be paid in the order in which they are given by the will, or the like: *Blower v. Morret*, 2 Ves. Sr. 420; *Beeston v. Booth*, 4 Madd. 161, 168; *Brown v. Brown*, 1 Keen, 275; *Thwaites v. Foreman*, 1 Coll. C. C. 409; *Titus's Adm'r v. Titus*, 26 N. J. Eq. 111. But if a testator gives a general legacy, and adds a direction that it "shall be paid in full" or "shall be paid at all events," or other direction to the same effect, such legacy will have precedence, and will not abate in common with the others, but must be paid in full, if possible, even though all the other general legacies should wholly fail: *Marsh v. Evans*, 1 P. Wms. 668; *Johnson v. Johnson*, 14 Sim. 313; *McLean v. Robertson*, 126 Mass. 537. But if two or more general legacies are accompanied with such directions, and there are not assets sufficient to pay them all in full, they will, of course, abate *pro rata* as among themselves, while all the other general legacies not thus preferred fail entirely: *Ibid.*; *Bancroft v. Bancroft*, 104 Mass. 226. An intention may also be inferred to give priority to one legacy or class of legacies, where the testator, after giving them, adds that as there will be a *surplus*, he gives

additional rules, showing what language will or will not sufficiently express such an intention, will be found in the foot-note.

§ 1141. **Exceptions — Legacies to Near Relatives.** — It is the settled rule of equity, independent of statutes, that among general legacies there is no precedence, no exemption from *pro rata* or complete abatement, in favor of legacies to a wife, child, or other near relative of the testator.¹ If, however, the testator shows an intent to give such legacies the preference, his intention will be followed; and a court of equity would easily discover such intention in favor of a widow, child, or descendant.² This general rule has been changed in several states by statutes which give legacies to near family relatives the preference over all other general legacies, and perhaps over those which are special or demonstrative.³

§ 1142. **The Same. Legacy for a Valuable Consideration.** — One exception to the general rule of abatement has always been admitted by courts of equity. A general legacy given for a valuable consideration — as, for example, to a widow in lieu and satisfaction of her dower, or to a creditor in payment or discharge of a debt — has priority, and does not abate with the other legacies, provided the dower right or the debt still exists at the testator's death.⁴

further legacies; the former will in such case have a priority; they will, however, abate ratably *as among themselves*; and in all these and similar cases the result is a matter of intention: *Att'y-Gen. v. Robins*, 2 P. Wms. 23; *Brown v. Brown*, 1 Keen, 275; *Stammers v. Halliley*, 12 Sim. 42.

¹ *Blower v. Morret*, 2 Ves. Sr. 420; *Titus's Adm'r v. Titus*, 26 N.J. Eq. 111; *Appeal of Trustees of the University of Pennsylvania*, 97 Pa. St. 187; see *Bliven v. Seymour*, 88 N. Y. 469; [also in *re Schweder's Estate*, (1891) 3 Ch. 44.]

² *Lewin v. Lewin*, 2 Ves. Sr. 415. The court leans in favor of such an intention in case of a widow or child, but against it in case of legatees who are wholly volunteers and *strangers*.

³ See Cal. Civ. Code, sec. 1361 (husband, widow, children, or other fam-

ily kindred); *Scotfield v. Adams*, 12 Hun, 366 (husband).

⁴ *Burridge v. Bradyl*, 1 P. Wms. 127; *Blower v. Morret*, 2 Ves. Sr. 420; *Heath v. Dendy*, 1 Russ. 513; *Davies v. Bush*, 1 Younge, 341; *Potter v. Brown*, 11 R. I. 232 (dower); *Sanford v. Sanford*, 4 Hun, 753 (legacy in lieu of dower is only entitled to preference in payment out of the personal property, and is not a charge on the real estate); *Matter of Dolan*, 4 Redf. 511 (dower); *McLean v. Robertson*, 126 Mass. 537 (for a debt); [*Harper's Appeal*, 111 Pa. St. 243; *Brown v. Brown*, 79 Va. 648. In lieu of dower: *Moore v. Alden*, 80 Me. 301; 6 Am. St. Rep. 203; *Borden v. Jenks*, 140 Mass. 565; *Security Co. v. Bryant*, 52 Conn. 311; 52 Am. Rep. 599; *Estate of Gotzian*, 34 Minn. 159; 57 Am. Rep. 43.]

§ 1143. **Appropriation of a Fund.**—If a particular fund has been set apart and appropriated by the executor for the payment of a legacy, *with the consent of the legatee*, and afterwards, through the wrongful act of the executor or otherwise, this fund becomes deficient, the legatee is not entitled to contribution from the other legatees of the same class, in order to make up the deficiency, but can only resort to the residue, if there be any. It is otherwise if the appropriation was made without the consent of the legatee; in that case he is entitled to call upon the other legatees, so that the loss should be borne by all of them ratably.¹

§ 1144. **Lapsed Legacies.**—When the legatee is dead at the time of making the will, or dies afterwards during the testator's lifetime, by the common-law rule the legacy to him is said "to lapse"; the gift to him wholly fails; it does not pass to *his* personal representatives, next of kin, or heirs, nor has he the power to dispose of it by his own will. In short, the legacy becomes entirely nugatory. The same general rule of the common law applies to a devise of any real estate.² Where a gift is made to a number of persons *as a class*, such class to be ascertained and fixed as it exists at the death of the testator or at any other specified time, the predecease of any member of the class will not occasion a lapse of his share; the class as it exists at the time designated will take the

¹ Baker v. Farmer, L. R. 3 Ch. 537, reversing L. R. 4 Eq. 382; Ex parte Chadwin, 3 Swanst. 380; Willmott v. Jenkins, 1 Beav. 401; Page v. Leap- ingwell, 18 Vcs. 463, 466; Humphreys v. Humphreys, 2 Cox, 184; Fonner- eau v. Poyntz, 1 Brown Ch. 472, 478. The reason of this distinction is, that where the legatee has consented to such an appropriation, he has made the executor his *personal* debtor; he has, as it were, received payment of his legacy, and then loaned it back to the executor; but in the other case, the act is that of the executor alone.

² Maybank v. Brooks, 1 Brown Ch. 84; Goodright v. Wright, 1 P. Wms. 397; Elliott v. Davenport, 1 P. Wms.

83; Appleton v. Rowley, L. R. 8 Eq. 139; Browne v. Hope, L. R. 14 Eq. 343. This common-law rule is very stringent. No mere words of the will, however express, showing an intent of the testator that a lapse should not take place, would prevent it: Appleton v. Rowley and Browne v. Hope, *supra*. The only possible mode of preventing the lapse was for the testa- tor to substitute some other legatee or devisee, in place of the one first named, to whom the property should go on his death. There must be an actual gift over to another legatee or devisee in case the first-named dies: Aspinall v. Duckworth, 35 Beav. 307; Browne v. Hope, *supra*.

whole property.¹ Whenever a legacy lapses, the specific property bequeathed, if it was specific, or the amount of assets which would be requisite for its payment if it was general, falls into the residue, and passes by the residuary clause, if there be one; but if there be no residuary clause, then as to such property the testator would in fact die intestate; the amount would be actually undisposed of by will. Where a devise lapsed, by the common-law rule the land given by it would not fall into any residuary clause of the testator's real estate, but would descend to his heir or heirs at law. This latter rule of the common law has been altered in England and generally in the American states by statute.²

§ 1145. **The Same. Statutory Changes.**—The foregoing rules of the common law were generally adopted in this country, and still form a part of our jurisprudence, except in the particular cases or under the particular circumstances where they have been altered by statute. Such modifying legislation, within certain well-defined limits, has been extensively enacted. One common type seems to have been followed. In England the modification is confined to a legacy or devise to a child or other descendant of the testator who shall predecease leaving *issue* living at the testator's death. The gift in such case shall not lapse.³ American statutes have sometimes

¹ Shuttleworth v. Greaves, 4 Mylne & C. 35; Lee v. Pain, 4 Hare, 201, 250; Leigh v. Leigh, 17 Beav. 605; Fitz Roy v. Duke of Richmond, 27 Beav. 186; Sanders v. Ashford, 28 Beav. 609; Aspinall v. Duckworth, 35 Beav. 307; [Hall v. Smith, 61 N. H. 144.] There are one or two other particular exceptions to the general rule. The most important is a bequest for *payment of debts* to the creditors themselves, which will not lapse, but will go to their representatives upon their predecease: Philips v. Philips, 3 Hare, 281.

² 1 Vict., c. 26, sec. 25. A lapsed devise is made to fall into the residue like a lapsed legacy. The reason of the common-law rule was found in the doctrine that a will of land, unlike

that of personal property, speaks as from the date of its execution, and not from the testator's death. This distinction has been generally abrogated by statute, so that in England and in most of our states wills of real and of personal property alike speak as at the time of the testator's death.

³ 1 Vict., c. 26, sec. 33: "Where any person, being a child or other issue of the testator, to whom any real or personal estate shall be devised or bequeathed, . . . shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened

made the alteration of the old rule a little broader in its operation, but still have confined it to gifts bestowed upon near family relatives of the testator.¹ Under the language of the English statute, it is held that the issue are not *substituted* in place of their deceased parent, but the legacy or devise actually *vests* in the original legatee or devisee to whom the testator gave it, so that it will pass by a will made by such legatee or devisee who dies before the original testator.² It would seem, however, that the language of some of the American statutes does not admit such an interpretation.

immediately after the death of the testator." It is held, under this section, that the *same* issue need not be living at the death of the legatee or devisee, and of the testator. It is enough if one person is living at the death of the legatee or devisee, and another person at the death of the testator, but both belonging to the same line of *issue*: In the Goods of Parker, 1 Swab. & T. 523.

¹ The provision is also generally retained, that a lapse is only prevented when the legatee or devisee leaves "issue" or "descendants," or perhaps only in behalf of such issue or "descendants." As illustrations, in New York, a legacy or devise to "a descendant, or a brother, or sister" of the testator does not lapse if such legatee or devisee predecease leaving "a descendant to descendants" who survive the testator: 2 Rev. Stats., p. 66, sec. 52. In construing this provision, it is held that the "descendants" of the legatee or devisee, in order to prevent a lapse, must be lineal descendants, — issue; that the word is used in its or-

dinary, popular meaning, and not in its purely technical sense of "heirs," either collateral or lineal: Van Benren v. Dash, 30 N. Y. 393. In California, the provision prevents a lapse "when any estate is devised to any child or *other relative* of the testator, and the devisee dies before the testator, leaving lineal descendants": Civ. Code, sec. 1310. It is very remarkable that the language of this section is confined to "devisee" and "devise," and no mention is made of "legatee," "legacy," or "bequest." It is to be presumed that the courts will extend its operation by interpretation, but such interpretation must certainly be a very strained one. Unfortunately for the cause of codification, the Civil Code of California contains too many such imperfect, partial, ambiguous provisions.

² Winter v. Winter, 5 Hare, 306; Wisden v. Wisden, 2 Smale & G. 396. This statute does not in any way affect gifts to children *as a class*: Olney v. Bates, 3 Drew. 319; Browne v. Hammond, Johns. 210.

SECTION II.

DONATIONS CAUSA MORTIS.

ANALYSIS.

- § 1146. General nature.
- § 1147. Is not testamentary.
- § 1148. The subject-matter of a valid gift.
- § 1149. Delivery.
- § 1150. Revocation.
- § 1151. Equitable jurisdiction.

§ 1146. **General Nature.** — A donation *causa mortis* is a gift absolute in form, made by the donor in anticipation of his speedy death, and intended to take effect and operate as a transfer of the title upon, and only upon, the happening of the donor's death. Between the time when the gift is made and the article donated is delivered, and the time when the donor dies, the donation is wholly inchoate and conditional; the property remains in the donor, awaiting the time of his death, and passes to the donee when the death, in anticipation of which the gift was made, happens, unless the donation has in the mean time been revoked by the donor; the donee thus becomes a trustee for the donor, with respect to the article delivered into his possession, until the gift is made perfect by the donor's death. The gift must be absolute, with the exception of the condition inherent in its nature depending upon the donor's death, as above described, and a delivery of the article donated is a necessary element; but it is subject to revocation by the act of the donor prior to death, and is completely revoked by the donor's recovery from the sickness or escape from the danger in view of which it was made.¹ Such a donation may be made by

¹ Since the whole doctrine is avowedly borrowed from the Roman law, it may be useful to give the definition contained in the *Institutes*: "Mortis causa donatio est, quæ propter mortis

fit suspicionem; cum quis ita donat ut, si quid humanitus ei contigisset, haberet is qui accipit; sin autem supervixisset is qui donavit, reciperet, vel si eum donationis pœnituisset, aut prior

a donor who anticipates his speedy death because he is suffering at the time under an attack of severe illness

decesserit is cui donatum sit." "A donation *mortis causa* is that which is made in expectation of death; as when anything is so given that if any fatal accident befalls the donor, the person to whom it is given shall have it as his own; but if the donor should survive, or if he should repent of having made the gift, or if the person to whom it has been given should die before the donor, then the donor shall receive back the thing given": Just. Inst., lib. 2, tit. 7, sec. 1; Sandars's Inst. 218. The California Civil Code thus defines it: "Sec. 1149: A gift in view of death is one which is made in contemplation, fear, or peril of death, and with intent that it shall take effect only in case of the death of the giver." "Sec. 1151: A gift in view of death may be revoked by the giver at any time, and is revoked by his recovery from the illness, or escape from the peril, under the presence of which it was made, or by the occurrence of any event which would operate as a revocation of a will made at the same time." In *Edwards v. Jones*, 1 Mylne & C. 226, 235, Lord Cottenham said: "A party making a *donatio mortis causa* does not part with the whole interest, save only in a certain event; and it is of the essence of such a gift that it shall not otherwise take effect. A *donatio mortis causa* leaves the *whole title in the donor*, unless the event occurs which is to divest him." To the same effect is *Staniland v. Willott*, 3 Macn. & G. 664, 674-677, 680, per Lord Truro, who concludes his discussion as follows: "I therefore feel bound to declare that the original transaction constituted a *donatio mortis causa*, and that the shares (given) after the plaintiff's (donor's) recovery from the illness during which the gift was made were held by the defendant (donee) as a trustee for the plaintiff."

On the general nature and essentials of gifts *causa mortis*, and as illustrations of the text, see *Ward v. Turner*, 2 Ves. Sr. 431; 1 Lead. Cas. Eq., 4th Am. ed., 1205, 1219-1229, 1230-1251; *Hedges v. Hedges*, Prec. Ch. 269; *Jones v. Selby*, Prec. Ch. 300; *Miller v. Miller*, 3 P. Wms. 356; *Lawson v. Lawson*, 1 P. Wms. 441; *Blount*

v. Burrow, 1 Ves. 546; *Tate v. Hilbert*, 2 Ves. 111, 120; *Gardner v. Parker*, 3 Madd. 184; *Snellgrove v. Baily*, 3 Atk. 214; *Duffield v. Elwes*, 1 Sim. & St. 239; 1 Bligh, N. S., 497, 527; *Powell v. Hellicar*, 26 Beav. 261; *Cosnahan v. Grice*, 15 Moore P. C. C. 215; *Boutts v. Ellis*, 4 De Gex, M. & G. 249; *Mitchell v. Smith*, 4 De Gex, J. & S. 422; *Hewitt v. Kaye*, L. R. 6 Eq. 198; *In re Beak's Estate*, L. R. 13 Eq. 489; *Moore v. Moore*, L. R. 18 Eq. 474; *Rolls v. Pearce*, L. R. 5 Ch. Div. 730; *In re Mead*, L. R. 15 Ch. Div. 651; *Robinson v. Ring*, 72 Me. 140; 39 Am. Rep. 308; *Walter v. Ford*, 74 Mo. 195; 41 Am. Rep. 312; *West v. Cavins*, 74 Ind. 265; *Pierce v. Boston Sav. Bank*, 129 Mass. 425; 37 Am. Rep. 371; *Turner v. Estabrook*, 129 Mass. 425; 37 Am. Rep. 371; *Conser v. Snowden*, 54 Md. 175; 39 Am. Rep. 368; *Estate of Barclay*, 11 Phila. 123; *Brooks v. Brooks*, 12 S. C. 422; *Darland v. Taylor*, 52 Iowa, 503; 35 Am. Rep. 285; *Conklin v. Conklin*, 20 Hun, 278; *Sheedy v. Roach*, 124 Mass. 472; 26 Am. Rep. 680; *McCarty v. Kearnan*, 86 Ill. 291; *Kilby v. Godwin*, 2 Del. Ch. 61; *Trorlicht v. Weizenacker*, 1 Mo. App. 482; *McGrath v. Reynolds*, 116 Mass. 566; *Clough v. Clough*, 117 Mass. 83; *Carr v. Sillo-way*, 111 Mass. 24; *Ellis v. Secor*, 31 Mich. 185; 18 Am. Rep. 178; *Stevens v. Stevens*, 5 Thomp. & C. 87; *Fiero v. Fiero*, 5 Thomp. & C. 151; *Case v. Dennison*, 9 R. I. 88; 11 Am. Rep. 222; *Tillinghast v. Wheaton*, 8 R. I. 536; 5 Am. Rep. 621; 94 Am. Dec. 126; *Smith v. Dorsey*, 38 Ind. 451; 10 Am. Rep. 118; *Baker v. Williams*, 34 Ind. 547; *Rockwood v. Wiggins*, 16 Gray, 402; *Hatch v. Atkinson*, 56 Me. 324; 96 Am. Dec. 464; *Southerland v. Southerland's Adm'r*, 5 Bush, 591; *Prickett v. Prickett's Adm'r*, 20 N. J. Eq. 478; *Dole v. Lincoln*, 31 Me. 422; *Borne-man v. Sidlinger*, 15 Me. 429; 33 Am. Dec. 626; *Weston v. Hight*, 17 Me. 287, 290; 35 Am. Dec. 250; *Holley v. Adams*, 16 Vt. 206, 210, 212; 42 Am. Dec. 508; *Smith v. Kittridge*, 21 Vt. 238, 245; *Meach v. Meach*, 24 Vt. 591; *Parish v. Stone*, 14 Pick. 198, 203, 204; 25 Am. Dec. 378; *Grover v. Gro-ver*, 24 Pick. 261; 35 Am. Dec. 319; *Sessions v. Moseley*, 4 Cush. 87; *Bates*

which he supposes to be his last, or because he is exposed, or expects soon to be exposed, to some great and unusual peril of his life; as by a soldier soon before entering into battle, or by a person immediately before undergoing a dangerous surgical operation. If a gift is actually made by the donor during his last sickness, or under any other circumstances which would naturally impress him with an expectation of speedy death, it will be presumed to be a donation *causa mortis*, although the donor does not, in express terms, declare it to be such.¹ Although courts do not lean against gifts *causa mortis*, yet the evidence to establish them should be clear and unequivocal, and will be closely scrutinized. The burden of proof lies on the donee.²

§ 1147. **Is not Testamentary.**—A gift *causa mortis* is not a *testamentary* act; if it becomes absolute, the title of

v. Kempton, 7 Gray, 382; Grattan v. Appleton, 3 Story, 755, 763; Raymond v. Sellick, 10 Conn. 480; Harris v. Clark, 2 Barb. 94, 96; 3 N. Y. 93; Delmotte v. Taylor, 1 Redf. 417; Ogilvie v. Ogilvie, 1 Bradf. 356; Westerlo v. De Witt, 35 Barb. 215; Wells v. Tucker, 3 Binn. 366; Nicholas v. Adams, 2 Whart. 17; Hebb v. Hebb, 5 Gill. 506; Bradley v. Hunt, 5 Gill & J. 54; 23 Am. Dec. 597; Pennington v. Gittings, 2 Gill & J. 208; Miller v. Jeffress, 4 Gratt. 472; Chevallier v. Wilson, 1 Tex. 161; [Basket v. Hassell, 107 U. S. 602; Einery v. Clough, 63 N. H. 552; 56 Am. Rep. 543; Seabright v. Seabright, 28 W. Va. 412.]

With regard to the nature of the peril, it has been held that a gift made by a soldier in time of war, not upon eve of battle or in anticipation of any *immediate* danger, but in anticipation of the general peril incident to his occupation, might be a valid gift *causa mortis*; Baker v. Williams, 34 Ind. 547; Gass v. Simpson, 4 Cold. 288; and see Smith v. Dorsey, 38 Ind. 451; 10 Am. Rep. 118. The contrary is decided in Irish v. Nutting, 47 Barb. 370; Dexheimer v. Gautier, 5 Rob. (N. Y.) 216; Gourley v. Linsensbiger, 51 Pa. St. 345; [and compare Parcher v. Savings Institution, 78 Me. 470.] In my opinion, these latter decisions are

clearly correct. If such gifts were valid as donations *causa mortis*, on the same ground gifts made at any time by persons having a chronic disease, although in no immediate danger, would be equally good, because their lives are more likely to be shortened than those of persons in health.

¹ Lawson v. Lawson, 1 P. Wms. 441; Cal. Civ. Code, sec. 1150. It is never necessary that the donor should expressly say that the gift is to be conditional on his death; this fact may be inferred from the circumstances: Gardner v. Parker, 3 Madd. 184, 185; Tate v. Leithead, Kay, 658; Ogilvie v. Ogilvie, 1 Bradf. 356. [Seabright v. Seabright, 28 W. Va. 412, 475.]

² Cosnahan v. Grice, 15 Moore P. C. C. 215; Ellis v. Secor, 31 Mich. 185; 18 Am. Rep. 178; Delmotte v. Taylor, 1 Redf. 417; Westerlo v. De Witt, 35 Barb. 215; Conklin v. Conklin, 20 Hun, 278; Sheedy v. Roach, 124 Mass. 472; 26 Am. Rep. 680; Rockwood v. Wiggin, 16 Gray, 402; Rhodes v. Childs, 64 Pa. St. 18; Dean v. Dean's Estate, 43 Vt. 337; Hatch v. Atkinson, 56 Me. 324; 96 Am. Dec. 464; First Nat. Bank v. Balcom, 35 Conn. 351; Prickett v. Prickett's Adm'rs, 20 N. J. Eq. 478; [Seabright v. Seabright, 28 W. Va. 412.]

the donee is derived directly from the donor in his lifetime, and not from or through his executors or administrators.¹ For this reason, if a person intends to make a *testamentary* gift, which for any reason is ineffectual, it cannot be supported as a donation *causa mortis*;² nor can an imperfect gift *inter vivos* be sustained as a valid donation *causa mortis*.³ It partakes, however, so much of the nature of a testamentary bequest that it is liable for the debts of the testator in case of a deficiency of assets.⁴ A valid gift may be made to any person, to the wife of the donor,⁵ or to one standing in fiduciary or confidential relations to him,⁶ as well as to all others.

¹ Ward v. Turner, 2 Ves. Sr. 431; Grattan v. Appleton, 3 Story, 755; [Emery v. Clough, 63 N. H. 552; 56 Am. Rep. 543.]

² Mitchell v. Smith, 4 De Gex, J. & S. 422; McGrath v. Reynolds, 116 Mass. 566; [Trenholm v. Morgan, 28 S. C. 268. In Basket v. Hassell, 107 U. S. 602, the donor delivered to the donee a certificate of deposit with the following indorsement: "Pay to Martin Basket, of Henderson, Ky.; no one else; then not till my death. My life seems to be uncertain. I may live through this spell. Then I will attend to it myself." The donor afterwards died. Held, not a valid gift. The court say, through Matthews, J., at page 609: "A *donatio causa mortis* must be completely executed, precisely as required in the case of a gift *inter vivos*, subject to be divested by the happening of any of the conditions subsequent; that is, upon actual revocation by the donor, or by the donor surviving the apprehended peril, or outliving the donee, or by the occurrence of a deficiency of assets necessary to pay the debts of the deceased donor. These conditions are the only qualifications that distinguish gifts *mortis causa* and *inter vivos*. On the other hand, if the gift does not take effect as an executed and complete transfer to the donee of possession and title, either legal or equitable, during the life of the donor, it is a testamentary disposition, good only if made and proved as a will." Page 614: "A delivery which does not confer upon the donee the present right to reduce the fund into posses-

sion, by enforcing the obligation according to its terms, will not suffice. A delivery, in terms, which confers upon the donee power to control the fund only after the death of the donor, when by the instrument itself it is presently payable, is testamentary in character, and not good as a gift." Compare Williams v. Guile, 117 N. Y. 343, where it was held that the insertion of a power of revocation by the donor, in an assignment of a policy of insurance, did not render the assignment invalid as a gift *causa mortis*, although the evidence showed that the instrument was not to take effect in *presenti* at all. It is said (p. 348): "No present possession or dominion did or could pass to the donee; . . . but there was sufficient in the case as made to establish a gift *causa mortis*." It is difficult to resist the impression that the language last quoted indicates a wrong conception of the nature of gifts *causa mortis*.]

³ Edwards v. Jones, 1 Mylne & C. 226; Kilby v. Godwin, 2 Del. Ch. 61. [See, however, Williams v. Guile, 117 N. Y. 343.]

⁴ Tate v. Leithead, Kay, 658; Smith v. Casen, cited 1 P. Wms. 406; Borne-man v. Sidlinger, 15 Me. 429; 33 Am. Dec. 626; House v. Grant, 4 Lans. 296.

⁵ Boutts v. Ellis, 4 De Gex, M. & G. 249.

⁶ In such case the evidence must be most unequivocal: Thompson v. Hefernan, 4 Dru. & War. 285 (to donor's spiritual adviser); Walsh v. Studdart, 4 Dru. & War. 159 (to his attorney).

§ 1148. **The Subject-matter of a Valid Gift.** — All kinds of personal property, using the word in its broad, mercantile sense, as equivalent to *assets*, which are *capable* of manual delivery, and of which the title, either legal or *equitable*, can be transferred by delivery, may be the subject-matter of a valid donation *causa mortis*. That all actual chattels, including money, either coin or bank notes, may be donated, has never been questioned. Whatever doubt may have once been entertained, the rule is now well established that all things in action which consist of the promises or undertakings of third persons, not the donor himself, of which the legal or equitable title can pass by delivery, may be the subjects of a valid gift, including promissory notes, bills of exchange, checks, bonds, mortgages, savings-bank pass-books, certificates of deposit, policies of insurance, and the like; and it is settled by the recent cases that a valid donation of negotiable instruments may thus be made without indorsement.¹ Debts

¹The following cases will furnish illustrations of the various kinds of articles, things in action, etc., with respect of which gifts have been sustained: *Chattels and money, whether coin or bills*: Ward v. Turner, 2 Ves. Sr. 431; Shanley v. Harvey, 2 Eden, 126; Miller v. Miller, 3 P. Wms. 356; Drury v. Smith, 1 P. Wms. 404; Bunn v. Markham, 7 Taunt. 224; Kilby v. Godwin, 2 Del. Ch. 61; Baker v. Williams, 34 Ind. 547; Dean v. Dean's Estate, 43 Vt. 337; Estate of Barclay, 11 Phila. 123; and see Coleman v. Parker, 114 Mass. 30. *Promissory notes of third persons*: Stevens v. Stevens, 5 Thomp. & C. 87; Bellell v. Carll, 33 N. Y. 581; House v. Grant, 4 Lans. 296; Coutant v. Schuyler, 1 Paige, 316; Craig v. Craig, 3 Barb. Ch. 76, 117; Southerland v. Southerland's Adm'r, 5 Bush, 591; Ashbrook v. Ryon's Adm'r, 2 Bush, 228; 92 Am. Dec. 481; Turpin v. Thompson, 2 Met. (Ky.) 420; Borneman v. Sidlinger, 15 Me. 429; 33 Am. Dec. 626; Caldwell v. Renfrew, 33 Vt. 213; Grover v. Grover, 24 Pick. 261; 35 Am. Dec. 319; Sessions v. Moseley, 4 Cush. 87; Chase v. Redding, 13 Gray, 418; Brown v. Brown, 18 Conn. 410; 46 Am. Dec.

328; Gourley v. Linsenbigler, 51 Pa. St. 345; Jones v. Deyer, 16 Ala. 221. *Unindorsed bills or notes*: In re Mead, L. R. 15 Ch. Div. 651; Veal v. Veal, 27 Beav. 303; Rankin v. Weguelin, cited 27 Beav. 308, 309; Bates v. Kempton, 7 Gray, 382; Chase v. Redding, 13 Gray, 418, 420; [Druke v. Heiken, 61 Cal. 346; 44 Am. Rep. 553.] *Certificates of deposit*: Moore v. Moore, L. R. 18 Eq. 474 (a "deposit note" which seems to be substantially the same as our certificate of deposit); Amis v. Witt, 33 Beav. 619 (same); Brooks v. Brooks, 12 S. C. 422; Westerlo v. De Witt, 36 N. Y. 340; 93 Am. Dec. 517; [Duffin v. Duffin, L. R. 44 Ch. Div. 76; and see Basket v. Hassell, 107 U. S. 602; ante, note to § 1147.] *Bonds, or bonds and mortgages*: Duffield v. Elwes, 1 Bligh, N. S., 497, 527, 542; Gardner v. Parker, 3 Madd. 184; Hurst v. Beach, 5 Madd. 351; Claverling v. Yorke, 2 Coll. C. C. 363, note; In re Patterson, 10 Jur., N. S., 578; Snellgrove v. Bailly, 3 Atk. 214; and see Conklin v. Conklin, 20 Hun, 278; Hatch v. Atkinson, 56 Me. 324; 96 Am. Dec. 464; Lee's Ex'r v. Boak, 11 Gratt. 182; Bradley v. Hunt, 5 Gill & J. 54; 23 Am. Dec. 597; Pennington

due from the donee himself may be donated, either by giving back to him the written evidence of debt, or by canceling or destroying the same, or by delivering a receipt.¹ Things in action, on the other hand, in which the donor himself is the debtor party, cannot be the subject-matter of a valid gift. The reason is, that, whatever be their form, these gifts would amount to nothing more than the donor's own naked executory *promise* to pay at some further day, without any consideration to support it; and such a voluntary promise cannot be enforced against the donor nor against his executors or administrators.²

v. Gittings, 2 Gill & J. 208; [Kiff *v. Weaver*, 94 N. C. 274; 55 Am. Rep. 601; Henschel *v. Maurer*, 69 Wis. 576; 2 Am. St. Rep. 757.] *Savings-bank pass-books*: Sheedy *v. Roach*, 124 Mass. 472; 26 Am. Dec. 680; Pierce *v. Boston Sav. Bank*, 129 Mass. 425; 37 Am. Rep. 371; Turner *v. Estabrook*, 129 Mass. 425; 37 Am. Rep. 371; Vandermark *v. Vandermark*, 55 How. Pr. 408; Tillinghast *v. Wheaton*, 8 R. I. 536; 5 Am. Rep. 621; 94 Am. Dec. 126; Case *v. Dennison*, 9 R. I. 88; 11 Am. Rep. 222; Dean *v. Dean's Estate*, 43 Vt. 337; Camp's Appeal, 36 Conn. 88; 4 Am. Rep. 39; Penfield *v. Thayer*, 2 E. D. Smith, 305; [Providence Inst. for Savings *v. Taft*, 14 R. I. 502; Ridden *v. Thrall*, 125 N. Y. 572; 21 Am. St. Rep. 758;] but see Ashbrook *v. Ryon's Adm'r*, 2 Bush, 228; 92 Am. Dec. 481 (pass-book of a bank); [also Walsh's Appeal, 122 Pa. St. 177; 9 Am. St. Rep. 83.] *Check of a third person*: Boutts *v. Ellis*, 4 De Gex, M. & G. 249; [Clement *v. Cheeseman*, 37 Ch. Div. 631 (unindorsed).] *Policy of insurance*: Witt *v. Amis*, 1 Best & S. 109; [Williams *v. Guile*, 117 N. Y. 343.] *Stock of corporations*: It is held in England that shares of stock are not capable of being the subject-matter of a valid donation, because no title can be transferred by delivery; no title can pass except by transfer on the company's own books: Moore *v. Moore*, L. R. 18 Eq. 474; Ward *v. Turner*, 2 Ves. Sr. 431; [and see Baltimore Report etc. Co. *v. Mali*, 65 Md. 93; 57 Am. Rep. 304.] Under the law of

this country, with respect to the title of the assignee before transfer is made on the company's books, there seems to be no reason why a certificate of stock may not be the subject of a valid gift,—certainly if it has been indorsed in blank; but in my opinion, such indorsement is not necessary. *Things in action in general*: See also Ellis *v. Secor*, 31 Mich. 185; 18 Am. Rep. 178; Wing *v. Merchant*, 57 Me. 383; Reed *v. Spaulding*, 42 N. H. 114; Champney *v. Blanchard*, 39 N. Y. 111; Waring *v. Edmonds*, 11 Md. 424; Phipps *v. Hope*, 16 Ohio St. 586; Connor *v. Trawick's Adm'r*, 37 Ala. 289, 295; 79 Am. Dec. 58. It may be remarked that, with regard to what may be given, the rules concerning the subject-matter of gifts *causa mortis* and of gifts *inter vivos* are the same.

¹ Moore *v. Darton*, 4 De Gex & S. 517 (giving a receipt); Darland *v. Taylor*, 52 Iowa, 503; 35 Am. Rep. 285 (destroying notes of the donee); Lee's Ex'r *v. Boak*, 11 Gratt. 182.

² This rule has been universally recognized and applied to different forms of promise. *The donor's own promissory note* cannot constitute a valid gift: West *v. Cavins*, 74 Ind. 265; Flint *v. Pattee*, 33 N. H. 520; 66 Am. Dec. 742; Copp *v. Sawyer*, 6 N. H. 386; Smith *v. Kittridge*, 21 Vt. 238; Holley *v. Adams*, 16 Vt. 206; 42 Am. Dec. 508; Raymond *v. Sellick*, 10 Conn. 480; Grymes *v. Hone*, 49 N. Y. 17; 10 Am. Rep. 313; Whitaker *v. Whitaker*, 52 N. Y. 368; 11 Am. Rep. 711; Johnson *v. Spies*, 5 Hun, 463; Kenistons *v. Sceva*, 54 N. H. 24;

§ 1149. **Delivery.** — It is essential to the validity of a donation that the thing given be delivered to the donee or to his use. Without a delivery the transaction would only amount to a promise to give, which, being without consideration, would be a nullity. The intention to give must be accompanied by a delivery, and the delivery must be made with an intention to give. The practical question therefore is, What is a sufficient delivery?¹ The

Brown v. Moore, 3 Head, 671. *The donor's own check*: For the same reason the donor's own check, if not paid before his death, cannot be a valid gift: *In re Mead*, L. R. 15 Ch. Div. 651; *Hewitt v. Kaye*, L. R. 6 Eq. 198; *In re Beak's Estate*, L. R. 13 Eq. 489; *Harris v. Clark*, 3 N. Y. 93, 110; 51 Am. Dec. 352; *Second Nat. Bank v. Williams*, 13 Mich. 282; *McKenzie v. Downing*, 25 Ga. 669; see *Walter v. Ford*, 74 Mo. 195; 41 Am. Rep. 312; [*Appeal of Waynesburg College*, 111 Pa. St. 130; 56 Am. Rep. 252;] but the gift may be operative if the check is paid before the donor's death, since the gift is then in reality one of money merely; and the same is true if acts are done prior to the donor's death, which are tantamount to payment; e. g., the check is certified, or that of a third person is substituted in its place, so that the gift is no longer the mere voluntary promise of the donor: *Rolls v. Pearce*, L. R. 5 Ch. Div. 730; *Bromley v. Brunton*, L. R. 6 Eq. 275; *Boutts v. Ellis*, 4 De Gex, M. & G. 249; *Rhodes v. Childs*, 64 Pa. St. 18; *Trorlicht v. Weizenacker*, 1 Mo. App. 482.

A deed of land made by a woman in expectation of death, in consideration of services rendered by the grantee, was held not to be a donation *causa mortis*, but an absolute irrevocable conveyance for a sufficient consideration, which would not be set aside at the suit of the grantor upon her recovery from the illness: *McCarty v. Kearnan*, 86 Ill. 291.

¹ The mere fact that the alleged donee acquires possession is clearly insufficient; in order to establish a gift, he must show affirmatively that the possession or custody was conferred upon him by the donor, or was assented to by the donor with the in-

tention thereby of divesting the donor of all control, and of making and perfecting a gift, and not with any other intention. [It is even said of gifts *causa mortis* that "although the delivery may have been at one time complete, yet this will not be sufficient, unless the possession be constantly maintained by the donee; if the donor again has possession, the gift becomes nugatory": *Hatch v. Atkinson*, 56 Me. 324; 96 Am. Dec. 464; *Dunbar v. Dunbar*, 80 Me. 152.] I add a brief abstract of some of the more recent decisions, which will illustrate, better than any general description, the essential elements of a sufficient delivery. The same rules concerning delivery apply alike to gifts *causa mortis* and to gifts *inter vivos*. A lady holding several notes made by her grandson destroyed them during her last illness, saying that she did not want him to pay them; held, a complete gift *causa mortis*, and the donee's acceptance would be presumed: *Darland v. Taylor*, 52 Iowa, 503; 35 Am. Rep. 285. Delivery of a savings-bank pass-book, accompanied by a written assignment to the donee, creates a valid gift of the money on deposit: *Sheedy v. Roach*, 124 Mass. 472; 26 Am. Rep. 680; and a delivery of such a book without any written assignment is also sufficient: *Pierce v. Boston Savings Bank*, 129 Mass. 425; 37 Am. Rep. 371; [*contra*, *Walsh's Appeal*, 122 Pa. St. 177; 9 Am. St. Rep. 83. Previous and continuing possession of such a book by the donee, it is said, does not dispense with the necessity of actual delivery: *Drew v. Hagerty*, 81 Me. 231; 10 Am. St. Rep. 255; but see *Providence Institution for Savings v. Taft*, 14 R. I. 502, where the contrary ruling is made in the case of a gift *inter vivos*.] Ac-

delivery may be made directly to the donee, or to an agent or trustee on his behalf, but not to an agent for the

tual delivery is essential, and if the delivery will not complete a gift *inter vivos*, it will not create a gift *causa mortis*. A mother, during her last sickness, delivered bank notes and chattels belonging to her separate estate to a third person for the benefit of her minor children; held, a valid gift to these children: *Kilby v. Godwin*, 2 Del. Ch. 61; [and see *Sourwine v. Claypool*, 138 Pa. St. 126.] Money having been deposited in a savings bank by the donor to the credit of the donee, the donor delivered to him a locked box containing the bank pass-book of such deposit, and accompanied the delivery with words of donation; held, a sufficient delivery to constitute a valid gift *causa mortis*, although the key of the box was found in the donor's pocket-book after his death: *Vandermark v. Vandermark*, 55 How. Pr. 408. A delivery to an agent or trustee for the donee, sufficient: *Clough v. Clough*, 117 Mass. 83. A delivery is no more essential to gifts *causa mortis* than to all other gifts. Things in action are transferable in writing, and the only question of doubt as to the requirement of delivery is, not whether the securities must be delivered, but whether the memorandum of transfer must be delivered. The execution and delivery of a written assignment of securities would constitute a valid gift: *Ellis v. Secor*, 31 Mich. 185; 18 Am. Rep. 178. A person, in expectation of death, gave a sealed package to another, informing him that it contained money and savings-bank books, with directions what was to be done with the property. On the donor's death the package was found to contain directions that the balance, after payment of certain debts, was to be divided among certain named persons; held, a valid gift *causa mortis* to the donee, in trust for the last-named persons: *Turner v. Estabrook*, 129 Mass. 425; 37 Am. Dec. 371. When money is already in the hands of the donee, a delivery of the receipt to him is sufficient: *Champney v. Blanchard*, 39 N. Y. 111. If a promissory note is already in the possession of the donee, no further delivery of it is necessary: *Wing v. Mer-*

chant, 57 Me. 383; *Stevens v. Stevens*, 5 Thomp. & C. 87. When a note is in possession of a trustee, the *cestui que trust* may give it to a third person without an actual delivery: *Southerland v. Southerland's Adm'r*, 5 Bush, 591. In the following cases the delivery was held to be insufficient: A wife, a few days before her husband's death, took certain bonds of his, and kept continuous possession thereof until after his death; no gift: *Conklin v. Conklin*, 20 Hun, 278. A third person's taking the key of a trunk from its usual place, putting goods into the trunk, and then returning the key to its former place, at the request of the owner during his last sickness, who accompanied his directions by the expression of a desire to make a gift of the trunk and contents, do not constitute a valid gift. The owner does not part with the control of the goods: *Coleman v. Parker*, 114 Mass. 30. A donor delivered to the donee a paper, not so attested as to be a will, purporting to give a sum of money, and at the same time handed him two savings-bank books, and added that the rest of the money was in his pantaloons' pocket, turning in his bed and looking towards the closet in which they hung, and that the owner of the house would give it to the donee; held, that the different acts could not be separated, the transaction must be treated as one intended entire gift, and the delivery was insufficient to complete it: *McGrath v. Reynolds*, 116 Mass. 566. A donor verbally gave to her husband, during her last sickness, a note which was then in a drawer in the house, but doing nothing more to perfect the gift; insufficient: *Stevens v. Stevens*, 5 Thomp. & C. 87; [and see *Wilcox v. Matteson*, 53 Wis. 23; 40 Am. Rep. 754.] A woman, during her last sickness, told a girl who lived with her to bring her bank-book, which being done, she said, "Take that and keep it, and lock it up," and the girl retained the book; held, no evidence of an intention to make a gift: *Fiero v. Fiero*, 5 Thomp. & C. 151. A delivery of the key of a trunk containing money and bonds is not a delivery of such contents: *Hatch*

donor. It may be actual—a manual possession of the article itself by the donee or his agent—or constructive. If constructive, it must be more than any mere words, and more than any mere *symbolic* act. A constructive delivery must be something which completely terminates the donor's custody and control of the article donated, and which places it wholly under the donee's power, and enables him without further act on the donor's part to reduce it to his own manual possession. All the cases which hold a constructive delivery to be good, whatever be their special circumstances, will be found to conform to this criterion: that the donor parts with all control and power of exercising dominion, while the donee obtains the exclusive power of taking physical possession and custody of the article, so that it is in fact placed under his sole dominion.¹ As a delivery is necessary, it follows, as a

v. Atkinson, 56 Me. 324; 96 Am. Dec. 464; and see also Carr v. Silloway, 111 Mass. 24; Case v. Dennison, 9 R. I. 88; 11 Am. Rep. 222; Prickett v. Prickett's Adm'rs, 20 N. J. Eq. 478; Conser v. Snowden, 54 Md. 175; 39 Am. Rep. 368; Robinson v. Ring, 72 Me. 140; 39 Am. Rep. 308.

¹ The leading case on the subject of delivery is Ward v. Turner, 2 Ves. Sr. 431, 1 Lead. Cas. Eq. 1205, in which Lord Hardwicke discussed the doctrine on principle and authority in a most exhaustive manner. See also Bunn v. Markham, 7 Taunt. 224, 227; Irons v. Smallpiece, 2 Barn. & Ald. 551; Thompson v. Heffernan, 4 Dru. & War. 285; Tate v. Hilbert, 2 Ves. 111, 120; Reddel v. Dobree, 10 Sim. 244; Noble v. Smith, 2 Johns. 52; 3 Am. Dec. 399; Harris v. Clark, 3 N. Y. 93; 51 Am. Dec. 352; Jackson v. Twenty-third St. R'y, 88 N. Y. 520; Craig v. Craig, 3 Barb. Ch. 76, 117; Brinkerhoff v. Lawrence, 2 Sand. Ch. 400; French v. Raymond, 39 Vt. 623; Dow v. Gould etc. Min. Co., 31 Cal. 629; [Yancey v. Field, 85 Va. 756; Daniel v. Smith, 64 Cal. 346; Seabright v. Seabright, 28 W. Va. 412.]

A delivery to an agent of the donor is not sufficient; Farquharson v. Cave, 2 Coll. C. C. 356, 367; [but see Williams v. Guile, 117 N. Y. 343;] but a valid

and sufficient delivery may be made to a third person as agent for the donee: Drury v. Smith, 1 P. Wms. 404; Moore v. Darton, 4 De Gex & S. 517; Kemper v. Kemper's Adm'r, 1 Duvall, 401; 85 Am. Dec. 636; Baker v. Williams, 34 Ind. 547; [Sourwine v. Claypool, 138 Pa. St. 126; Woodburn v. Woodburn, 123 Ill. 608.] The delivery must be in the lifetime of the donor; a delivery to a third person, with directions to deliver to the donee after the donor's death, is not sufficient: Walter v. Ford, 74 Mo. 195; 41 Am. Rep. 312; *sed quære*. [Savings Bank v. Fogg, 82 Me. 538; but see Emery v. Clough, 63 Me. 552, 555.] The gift may also be made upon trust, and the delivery to a trustee on behalf of the donee who is the ultimate beneficiary: Sheedy v. Roach, 124 Mass. 472; 26 Am. Rep. 680; Kilby v. Godwin, 2 Del. Ch. 61; Trorlicht v. Weizenecker, 1 Mo. App. 482; Clough v. Clough, 117 Mass. 83; Turner v. Estabrook, 129 Mass. 425; 37 Am. Rep. 371.

With regard to a constructive delivery, it has been held that a delivery of the key of a locked receptacle was a sufficient delivery of the contents; thus a delivery of the key of a trunk was held, in an old case, to be a good delivery of the trunk and its contents: Jones v. Selby, Prec. Ch. 300; a de-

further requisite to a valid donation, that the donee must accept it. Such acceptance, however, will be presumed when the gift is for his advantage, in the absence of all contrary evidence.¹

§ 1150. **Revocation.**—The peculiar element of the donation *causa mortis*, which distinguishes it from the one *inter vivos*, is its revocable nature. Although it be absolute in its form, and although the thing must be delivered to the donee, yet the transaction is inchoate, and the property remains in the donor until his death. He may, therefore, at any time prior to his death, revoke and annul the gift by language sufficiently indicating such intent. If the donee did not, therefore, voluntarily surrender up possession of the thing, he would retain it as a trustee for the donor's executors or administrators, who could recover the same, or its value.² The donor's

livery of the key of a warehouse in which the furniture donated was locked was held to be a good delivery of the furniture: *Smith v. Smith*, 2 Strange, 955; and the delivery of the key of a locked room in which was an unlocked trunk containing things in action, written securities, was held a good delivery of those securities: *Penfield v. Thayer*, 2 E. D. Smith, 305; and see *Vandermark v. Vandermark*, 55 How. Pr. 408; *Cooper v. Burr*, 45 Barb. 9; *Miller v. Jeffress*, 4 Gratt. 472, 479. But this rule should be applied with the most careful limitation, and perhaps it may be regarded as doubtful under the light of recent decisions. At all events, there should be the clearest evidence of the donor's intention to make the gift, and something more than the mere delivery of the key. Unless the donor completely divests himself of all power over the article, if he retains in any manner any custody over it, or exercises any acts of dominion over it, the delivery of a key will not be a sufficient delivery to perfect the gift: *Powell v. Hellicar*, 26 Beav. 261; *Reddel v. Dobree*, 10 Sim. 244; *Farquharson v. Cave*, 2 Coll. C. C. 356; *Trimmer v. Danby*, 25 L. J. Ch. 424; *Hawkins v. Blewitt*, 2 Esp. 663; *Maguire v. Dodd*,

9 Ir. Ch. 452-459; and the supreme court of Maine has expressly decided that the delivery of the key of a trunk in which money and bonds were locked up was not a sufficient constructive delivery of such contents: *Hatch v. Atkinson*, 56 Me. 324; 96 Am. Dec. 464.

¹ *De Levillain v. Evans*, 39 Cal. 120; *Darland v. Taylor*, 52 Iowa, 503; [*Sourwine v. Claypool*, 138 Pa. St. 126 (donee being *feme covert*, law accepts the gift for her).] In the first of these cases the court held that both by the Roman law and the common law, a donation is not valid and binding unless accepted. But if the donee is *sui juris*, he will be presumed to have accepted the donation, when it is for his advantage, unless the contrary is shown; and when the donee is *non sui juris*, if the gift is for his advantage, the law accepts it for him, and no proof of acceptance is necessary. The theory given in this case was applied to a deed of land, but the same doctrine applies, of course, to gifts of all kinds. In the second case cited, an acceptance was held to be presumed.

² *Staniland v. Willott*, 3 Macn. & G. 664; and see *Fiero v. Fiero*, 5 Thomp. & C. 151; *Ellis v. Secor*, 31 Mich. 185; 18 Am. Rep. 178.

recovery from his sickness, or his escape from the anticipated peril with his life, also operates as a revocation, and the donee would then hold the article as a trustee for the donor.¹ When a gift *causa mortis* is made during sickness, it is essential, in order to perfect it and prevent a revocation, that the donor should die of the very same sickness from which he is then suffering, and that there should be no intervening recovery between that illness and his final death; and it seems that the donee must affirmatively show the existence of all these facts.² The gift cannot, it seems, be revoked by the donor's will, although it *may* be satisfied by a legacy given thereby.³

§ 1151. **Equitable Jurisdiction.**—Since a donation *causa mortis* is not in any sense a testamentary act, and does not require the assent or interposition of the executor or administrator to perfect the donee's title, and does not belong to a "succession" or "administration," it did not come within the jurisdiction of the English ecclesiastical courts.⁴ The enforcement of the gift at the suit of the donee undoubtedly fell within the jurisdiction of courts of law; but since the gift was not absolute, but was always subject to the rights of the donor's creditors, the remedy conferred by this jurisdiction was necessarily uncertain and incomplete; under some circumstances, it would be clearly impossible to adjudicate finally upon the claim of the donee until there had been a general ac-

¹ Ward v. Turner, 2 Ves. Sr. 431; 1 Lead. Cas. Eq. 1245; Tate v. Hilbert, 2 Ves. 111; 4 Brown Ch. 286; Bunn v. Markham, 7 Taunt. 224; and see the cases cited *ante*, under § 1146.

² Conser v. Snowden, 54 Md. 175; 39 Am. Rep. 368. [But it is held that he need not die of the same disease of which he was apprehensive; as where a gift was made in anticipation of a surgical operation, which was successful, but before the donor left the hospital he died of heart disease, from which he was also suffering at the time of the gift: Ridden v. Thrall, 125 N. Y. 572; 21 Am. St. Rep. 758.]

³ Jones v. Selby, Prec. Ch. 300; Johnson v. Smith, 1 Ves. Sr. 314; but the California Civil Code somewhat modifies this rule. "Sec. 1152: A gift in view of death is not affected by a previous will; nor by a subsequent will, unless it expresses an intention to revoke the gift."

⁴ Ward v. Turner, 2 Ves. Sr. 431; Miller v. Miller, 3 P. Wms. 356; Thomson v. Batty, 2 Strange, 777. Of course, I refer to a "succession" or "administration" under the English law, and not to administrations as enlarged by the statutes in many of our states.

counting and settlement of the donor's estate. Indeed, there were *substantially* the same difficulties in the way of exercising the jurisdiction at law over these gifts which prevented the enforcement of general legacies by legal actions.¹ For these reasons courts of equity assumed jurisdiction over the enforcement of gifts *causa mortis*, and the grounds of this jurisdiction were to some extent the same as those which support the jurisdiction over legacies, and over administrations generally. This jurisdiction, however, unlike that over legacies and administrations, never became exclusive; it was always merely concurrent; it was based, not upon any *equitable* right, title, or interest of the donee in the thing donated, but solely upon the uncertainty, incompleteness, and inadequacy of the remedies which courts of law furnished to the donee. The jurisdictions in equity and at law were exercised concurrently.² There are, however, special circumstances in which the jurisdiction of equity must be necessary and exclusive, since the right and interest of the donee in the subject-matter is only equitable, — is not a legal title and ownership. Where bonds due to the donor, or bonds and mortgages, or negotiable instruments payable to order, *but unindorsed*, are given by a mere verbal donation, without any written transfer, although delivered into the donee's possession, the legal title to such securities passes to the executors or administrators of the donor on his death; but they hold this legal title *as trustees* for the

¹ Where the gift had been revoked, or was not complete, the donor or his personal representatives could, without any difficulty, recover it or its value in an action at law, and there would then be no reason for the interposition of equity. But where the donee sued at law, and the executor or administrator set up a deficiency of assets, it would be very difficult at best to try that issue before a jury, and almost impossible for the donee to prove a sufficiency of assets previous to an accounting.

² *Duffield v. Elwes*, 1 Bligh, N. S., 497; *Ward v. Turner*, 2 Ves. Sr. 431; *Miller v. Miller*, 3 P. Wms. 356; *Thomson v. Batty*, 2 Strange, 777. For more recent English illustrations, see *Staniland v. Willott*, 3 Macn. & G. 664; *Boutts v. Ellis*, 4 De Gex, M. & G. 249; *Mitchell v. Smith*, 4 De Gex, J. & S. 422; *Hewitt v. Kaye*, L. R. 6 Eq. 198; *In re Beak's Estate*, L. R. 13 Eq. 489; *Moore v. Moore*, L. R. 18 Eq. 474; *Rolls v. Pearce*, L. R. 5 Ch. Div. 730; *In re Mead*, L. R. 15 Ch. Div. 651.

donee, who can enforce his equitable title only in a court of equity. This is the theory on which verbal gifts of such securities were supported.¹ Whenever, also, a gift is made to one person upon a trust in favor of others, there is ample ground for the jurisdiction of equity in enforcing the donation on behalf of these beneficiaries.² The same jurisdiction as established by the English court of chancery should exist in all of the American states which have adopted the full equitable jurisdiction and jurisprudence, although the concurrent jurisdiction at law may be more frequently exercised, and the powers of the courts of probate may be enlarged by statute.³ Practically, the equitable jurisdiction over this gift is exercised in the American states concurrently with that at law, and that of the probate courts in the regular course of administration. Under the large powers given by statute to these courts in many of the states, the claim of the donee, like that of an ordinary creditor, may be presented and determined, either on a special application, or in the final settlement of the estate by a decree of the probate court.⁴ While the equitable jurisdiction is exercised concurrently with that at law, substantially as in England, in some states, in others it is exercised only under special circumstances, where the remedy at law on the particular facts would be inadequate, and is governed by considera-

¹ *Duffield v. Elwes*, 1 Bligh, N. S., 497, 530, 534; *Staniland v. Willott*, 3 Macn. & G. 664, 675, 676; [*Trenholm v. Morgan*, 28 S. C. 268;] and see cases concerning undorsed notes *ante*, under § 1148.

² See *Trorlicht v. Weizenecker*, 1 Mo. App. 482.

³ The only ground for denying or restricting the equitable jurisdiction is the principle that the jurisdiction only exists where there is not an adequate remedy at law. In applying this doctrine, it cannot be denied that the courts of some of the states seem to have overlooked or to have ignored the equally clear and fundamental

principle that where the equitable jurisdiction has once existed, it is not destroyed, nor even lessened, because other courts have acquired the power of granting the same or other adequate remedy, either by their own action or by statute, in the absence of statutory language *necessarily* restrictive. In this manner the equitable jurisdiction has been practically abandoned or curtailed in many instances, in direct violation of this well-settled and familiar doctrine.

⁴ As illustrations, see *Stevens v. Stevens*, 5 Thomp. & C. 87; *Estate of Barclay*, 11 Phila. 123; *Walter v. Ford*, 74 Mo. 195; 41 Am. Rep. 312.

tions similar to those which regulate the equitable jurisdiction over administrations in general. I have placed some recent examples, by way of illustration, in the foot-note.¹

SECTION III.

ADMINISTRATION OF ESTATES.

ANALYSIS.

§ 1152. Equitable jurisdiction in the United States.

§ 1153. The same; fundamental principle; *Rosenberg v. Frank*.

§ 1154. The jurisdiction as administered in the several states; *general résumé*
— The states alphabetically arranged in foot-note.

§ 1152. **Equitable Jurisdiction in the United States.**
— The grounds upon which the jurisdiction of the English court of chancery over the subject of administrations was originally based have been explained in the preceding section concerning legacies.² I have already described, in a very general manner, the extent and nature of the equitable jurisdiction over the same matters in the various states of this country.³ Without repeating

¹ *Actions at law*. — In a few of these cases the action is against the donee to recover the thing in his possession, or its value. In some, the action is by the donee upon the note, or other thing in action donated, to recover the amount thereof from the debtor party. In the remainder, the action is by the donee to enforce the gift; *Vandermark v. Vandermark*, 55 How. Pr. 408; *Coleman v. Parker*, 114 Mass. 30; *Clough v. Clough*, 117 Mass. 83; *Pierce v. Boston Sav. Bank*, 129 Mass. 425; 37 Am. Rep. 371; *Ellis v. Secor*, 31 Mich. 185; 18 Am. Rep. 178; *Fiero v. Fiero*, 5 Thomp. & C. 151; *Case v. Dennison*, 9 R. I. 88; 11 Am. Rep. 222; *House v. Grant*, 4 Lans. 296; *Rhodes v. Childs*, 64 Pa. St. 18.

Equitable actions. — The following are either suits in equity, or actions equitable in their nature and belonging to the equitable jurisdiction: *Brooks v. Brooks*, 12 S. C. 422; *Darland v. Taylor*, 52 Iowa, 503; 35 Am.

Rep. 285; *Conklin v. Conklin*, 20 Hun, 278; *Sheedy v. Roach*, 124 Mass. 472; 26 Am. Rep. 680; *Kilby v. Godwin*, 2 Del. Ch. 61; *Trorlicht v. Weizenecker*, 1 Mo. App. 482; *McGrath v. Reynolds*, 116 Mass. 566; *Carr v. Sillo-way*, 111 Mass. 24; *Smith v. Dorsey*, 38 Ind. 451; 10 Am. Rep. 118; *Baker v. Williams*, 34 Ind. 547; *Tillinghast v. Wheaton*, 8 R. I. 536; 5 Am. Rep. 621; 94 Am. Dec. 126; *Dean v. Dean's Estate*, 43 Vt. 337; *Hatch v. Atkinson*, 56 Me. 324; 96 Am. Dec. 464; *Southerland v. Southerland's Adm'r*, 5 Bush, 591; *Prickett v. Prickett's Adm'r*, 20 N. J. Eq. 478; *Turner v. Estabrook*, 129 Mass. 425; 37 Am. Rep. 371; *Conser v. Snowden*, 54 Md. 175; 39 Am. Rep. 368; *West v. Cavins*, 74 Ind. 265; *Robinson v. Ring*, 72 Me. 140; 39 Am. Rep. 308.

² See *ante*, §§ 1127, 1128.

³ See vol. 1, §§ 346-350; [also §§ 156, 187, 235.]

the conclusions there formulated, but rather adopting them as the foundation of further discussion, I propose in the present section to furnish a somewhat more detailed and practical description of this branch of the equitable jurisdiction as it is now actually administered throughout the American states. Such a sketch must necessarily be very imperfect. The great diversity in the legislation, and the divergent and often conflicting theories of interpretation held by different courts in applying these statutes to the settled doctrines of equity, render it impossible to give anything more than a partial and fragmentary account of the resulting jurisdiction as it prevails in all the states. I make no attempt, therefore, to present in an exhaustive manner the complete system as it exists in any single state. I shall endeavor merely to furnish such a general view, drawn from the most recent decisions based upon existing statutes, that the reader in every state shall be able to form an accurate general notion of the systems prevailing in each of the other commonwealths, and to apprehend the spirit and tendency of their decisions, and to determine whether those decisions may be regarded as authoritative in the tribunals of his own state, or whether they would be misleading because proceeding upon a different theory from that adopted by his own courts. To fully accomplish even this limited object is a task of extreme difficulty. I hope, however, that the results of the discussion may render some assistance to members of the bar with respect to a branch of the equitable jurisdiction second to none other in importance, but which has fallen, in this country, into a condition of confusion and uncertainty.

§ 1153. **The Same. The Fundamental Principle.**—One fundamental principle should be constantly kept in mind; it underlies all particular rules, and furnishes the solution for most of the special questions which can arise. In all those states which have adopted the entire

system of equity jurisprudence, whatever be the legislation concerning the powers and functions of the probate courts, and whatever be the nature and extent of the subjects committed to their cognizance, the original equitable jurisdiction over administrations does and must still exist, except so far and with respect to such particulars as it has been abrogated by express prohibitory, *negative* language of the statutes, or by necessary implication from *affirmative* language conferring exclusive powers upon the probate tribunals. This equitable jurisdiction may be dormant, but, except so far as thus destroyed by statute, it must continue to exist, concurrent with that held by the courts of probate, ready to be exercised whenever occasion may require or render it expedient.¹ This general principle, so familiar, so funda-

¹ This principle, which is sometimes lost sight of, is fully sustained by a recent decision of the supreme court of California, and the opinion is so remarkable that I shall quote from it at some length. The constitution of the state provided that "the district courts shall have original jurisdiction in all cases in equity," and established courts of probate. The legislation with reference to the probate courts and the subject of administrations is exceedingly full, comprehensive, and minute. The power conferred upon these tribunals is co-extensive with the entire subject-matter of administration and final settlement of the estates of decedents, testate or intestate. No state in the Union has a more full and complete statutory system. In *Rosenberg v. Frank*, 58 Cal. 387, a testator bequeathed, "To my sisters E. F., H. R., and H. R. one hundred thousand dollars each; to my sisters T. W. and L. C. fifty thousand dollars each; to J. R., in trust for H. G., C. M., and R. F., one hundred and fifty thousand dollars." After several other bequests, the residuary clause gave the residue "to be divided *pro rata* between my sisters E. F., H. R., H. R., T. W., L. C., and the children of Mary F., deceased, namely, H. G., C. M., and R. F." These residuary legatees were the

same persons named in the former bequest. The will was duly admitted to probate, and while the administration was proceeding under the control of the probate court, the executors brought this equitable action to obtain a construction of the said clauses, and especially of the residuary clause. Objection was raised that the court had no jurisdiction. It was urged that the probate court had power to construe the will (which it certainly had under the statute) and that its jurisdiction over the subject was complete and exclusive. The supreme court, however, asserted the equitable jurisdiction, and the grounds upon which their decision is rested are broad and general. Thornton, J., said (p. 400): "In our opinion, the jurisdiction of the district court was ample and plenary. The jurisdiction of the district court was conferred by the amendments of 1862 to the constitution of 1849. [See the clause quoted above.] The jurisdiction could hardly have been conferred in clearer or broader language; and the language of the article as it was adopted in 1849 was no less broad. This section as amended in 1862 has been construed by this court as conferring on the district courts the same jurisdiction in equity as that administered by the high courts of chancery in Eng-

mental, running through all branches of the equitable jurisdiction, but so often lost sight of by American courts

land: *People v. Davidson*, 30 Cal. 379. In *Willis v. Farley*, 24 Cal. 500, it was held that the constitution invests the district court with original jurisdiction in all cases in equity. The court further said in that case: 'Powers which are granted by the constitution cannot be taken away by legislative enactment, and remedies which are secured to the citizen by the organic law cannot be destroyed by a department of the government that exists in subordination to the constitution.' This was in an action brought against the administrator of a deceased mortgagor and his heirs to foreclose a mortgage. See also *Clarke v. Perry*, 5 Cal. 60; 63 Am. Dec. 82; *Sanford v. Head*, 5 Cal. 298; *Deck v. Gerke*, 12 Cal. 436; 73 Am. Dec. 555. In the last-cited cause *Baldwin, J.*, in the opinion of the court, says on this subject: 'Apart from the previous decisions of this court, it might be questioned whether the probate court, under our constitution, did not possess an exclusive jurisdiction over testamentary and probate matters: *Blanton v. King*, 2 How. (Miss.) 856; *Carmichael v. Browder*, 3 How. (Miss.) 252; *Faroe's Heirs v. Graves*, 4 Smedes & M. 707. But this court has recognized a different rule. In *Clarke v. Perry*, 5 Cal. 60, 63 Am. Dec. 82, it was held that "the probate court is a court of special and limited jurisdiction. Most of its general powers belong peculiarly and originally to the court of chancery, *which still retains all its jurisdiction*. Where, therefore, a bill is filed in chancery against an administrator, to compel him to account by one who has not been an actual party to a proceeding or settlement in the probate court, he may totally disregard such proceeding or settlement; and although the settlement in the probate court is a final settlement, the complainant, who was no party to it, may treat it as a nullity, and proceed to invoke the equitable powers of the district court, and compel the administrator to a full account." And in *Sanford v. Head*, 5 Cal. 298, the same doctrine was reaffirmed in emphatic terms. The ground upon

which equity took jurisdiction in England in such cases was, that the spiritual courts were not able, from their constitution, to afford adequate and complete relief. Though much of the reason of this rule is removed in most of the states of the Union where probate courts exist, yet the power of the chancery court to interpose for the settlement of accounts, and the enforcement of trusts of this sort, is maintained. Under the decisions of this court, chancery has assumed jurisdiction over such subjects, and as, probably, rights have vested under their decrees, and the principle asserted is more convenient in practice, we think it is not permissible now to question the jurisdiction.' The court in this case sustained a very broad jurisdiction in the district court. The jurisdiction here invoked was exercised in the case of *Payne v. Payne*, 18 Cal. 291, in construing the will of Theodore Payne. One of the points determined in that case was as to whom the estate was devised, which might have been determined by the probate court on the distribution of the estate by that tribunal. The court held that the whole estate was devised to the widow, to the exclusion of the children. There was no doubt expressed or intimated as to the jurisdiction in that case. The power of the court of chancery in England over the administration of estates does not seem to have been thoroughly established until near the close of the reign of Charles II. After the statute in England had been enacted, empowering the spiritual courts to make distribution, it was contended that that court ought to make distribution, and that the courts of chancery no longer had jurisdiction. In answer to this contention, the Lord Chancellor King said, in 1682, the 'spiritual court had but a lame jurisdiction, and there being no negative words in the act of Parliament, he thought a bill for distribution very proper in this court': *Story's Eq. Jur.*, secs. 542, 543, 1065; *Gould v. Hayes*, 19 Ala. 449. The jurisdiction of the probate courts is not defined in the constitution. In article

in dealing with the jurisdiction as applied to administrations, was admirably stated by one of the ablest of American judges: "There is nothing in the nature of jurisdiction, as applied to courts, which renders it exclu-

VI., section 8, constitution of 1849, it is provided that 'the county judges shall also hold in their several counties probate courts, and perform such duties as probate judges as may be prescribed by law.' . . . It seems from the above that the legislature may make the jurisdiction of the probate judge or court what it pleases, within the limits of that jurisdiction which is understood as usually pertaining to probate courts. But the position that it can, under this power, take away from the district courts any of the equity jurisdiction conferred on them by the constitution is manifestly untenable: See *Willis v. Farley*, 24 Cal. 499; *Gould v. Hayes*, 19 Ala. 450. Nor could this be done if the full probate jurisdiction was conferred on the county or probate courts by the constitution. This very point was so held in *Courtwright v. Bear River etc. Co.*, 30 Cal. 573, in relation to the jurisdiction to abate nuisances under the constitutional amendments of 1862. This constitution gave jurisdiction to the county courts in plain terms '*to abate a nuisance*.' An action was brought in the district court to abate a nuisance, and it was sustained as an equity case, under the grant of equity jurisdiction. This ruling was subsequently approved in *Yolo County v. City of Sacramento*, 36 Cal. 195; and see *Caulfield v. Stevens*, 28 Cal. 118; *Stoppelkamp v. Mangeot*, 42 Cal. 325. [The judge also quotes the admirable language of Bronson, J., in *Delafield v. State of Illinois*, 2 Hill, 159, 164, which I have incorporated into the text.] For the reasons above given, we are of opinion that the district court has jurisdiction of this cause. But it is said that the probate court first acquired jurisdiction, and therefore must be allowed to exercise it, to the exclusion of the district court. We do not think that this rule can be properly applied here. The will had only been admitted to probate in the probate court. The matter of distribution was not before it. Moreover, the probate

court held its jurisdiction subject to the exercise of this jurisdiction by the district court. Of the probate the jurisdiction of the probate court is exclusive: *San Francisco v. Lawton*, 18 Cal. 465; 79 Am. Dec. 187. Until that was done the district court could not exercise the jurisdiction invoked in this case. To hold that the probate court had first acquired jurisdiction, to the exclusion of any other court, by the will having been admitted to probate in it, would be to oust the jurisdiction of the district court entirely. The probate court taking jurisdiction under these circumstances, it holds it subject to the jurisdiction of the district court, and must be bound by the decree of the district court. We are of opinion that this jurisdiction in the district court is a beneficial one, and can be usefully employed in expediting the settlement of estates." This is an instructive opinion, and, considering the tendency in so many American courts to limit the equitable jurisdiction upon the alleged ground that there is an adequate remedy at law, it is not a little remarkable. It will be observed that the court does not base its decision upon the well-known doctrine that equity has a jurisdiction to *construe* wills, — a doctrine accepted even in states where the probate jurisdiction over administrations in general is regarded as exclusive. It may be doubted whether the case falls within that doctrine as it is ordinarily expressed, since the clause of the will for which a construction was asked contained and created no trust. The decision is rested on the broad and universal ground that the conferring jurisdiction by mere affirmative language in a statute or constitution does not destroy similar or identical jurisdictions already existing; upon the broad and universal ground that the original jurisdiction of equity *over administration* still remains, notwithstanding a complete jurisdiction over the same subject-matter given to the probate courts.

sive. It is a matter of common experience that two or more courts may have concurrent powers over the same parties and the same subject-matter. Jurisdiction is not a right or privilege belonging to the judge, but an authority or power to do justice in a given case, when it is brought before him. There is, I think, no instance in the whole history of the law where the mere grant of jurisdiction to a particular court, without any words of exclusion, has been held to oust any other court of the powers which it before possessed. Creating a new forum with concurrent jurisdiction may have the effect of withdrawing from the courts which before existed a portion of the causes which would otherwise have been brought before them; but it cannot affect the power of the old courts to administer justice when it is demanded at their hands."¹

§ 1154. **The Jurisdiction as Administered in the Several States.**—In order to present the most complete view possible of the equitable jurisdiction as it is now actually administered in this country, and as an introduction to the further discussions on the subject, I have placed in the foot-note an abstract of the more important and recent decisions in nearly all of the states.² From a com-

¹ *Delafield v. State of Illinois*, 2 Hill, 159, 164, per Bronson, J.

² To give a complete account of the system in any one state would require a detailed examination of all its statutes concerning administration, — a matter entirely foreign to the purposes of this work, and which would demand for its full treatment a whole volume by itself. Furthermore, the decisions are so conflicting, and, so to speak, fragmentary, that it seems inexpedient, if not impossible, to discuss the *doctrines* in their entirety, as though they prevailed uniformly throughout all of the commonwealths. It seemed to be the better plan to collect the decisions in each state separately, and to arrange them in the order of the several states. This method may involve some repetition, where the same rule has been adopted

by the courts of various states; but the amount of such repetition is very little. Since the decisions are largely based upon the legislation, and since the statutory systems are so different in their detail in the different states, there are comparatively few instances of common doctrines and rules. By presenting each state separately, and thus indicating the *tendency* of judicial decision therein, and the theory adopted by its courts, this abstract will enable the practicing lawyer in a particular state to ascertain the decisions in other commonwealths which are analogous to or in harmony with those of his own courts, so that they can be used as authoritative, and also those which are based upon a wholly different theory of the jurisdiction, so that they may be distinguished as being without binding authority.

parison of these decisions, it will be seen that the states may be *roughly* grouped into three classes, although there

This is practically the extent of the aid which the necessary limits of the present discussion permit; but even such aid will, I believe, be of substantial benefit to members of the bar and to the bench in all parts of the country. In connection with this note the reader should consult vol. 1, §§ 343-351.

Alabama. — Although the probate court has an ample jurisdiction over the subject of administrations, the concurrent, and sometimes even exclusive, jurisdiction of equity over the same subject-matter is still preserved to a very large extent, and is constantly exercised. The decisions in no other state, perhaps, are more instructive as illustrating the equitable jurisdiction left unobstructed by an elaborate statutory system of administration in the courts of probate. The general principle is asserted in the clearest manner, that the original jurisdiction of equity over administrations is not taken away by the affirmative language of statutes giving a like jurisdiction to probate courts. The doctrine is firmly established that equity retains its original jurisdiction over administrations, the marshaling and distribution of assets, the compulsory payment of legacies, and the like, which may be invoked by the heirs, distributees, or legatees, at any time before the concurrent jurisdiction of the court of probate [the "orphans' court"] has attached, without the assignment of any special reason for so doing. If, however, the concurrent jurisdiction of the probate court has already attached by the commencement of proceedings therein, these parties cannot invoke the aid of equity in the matter of the administration, unless the circumstances of the case involve some elements of distinctively equitable cognizance. Where, on the other hand, an executor or administrator is the *actor*, he *must* ordinarily institute proceedings in the probate court in the first instance, and cannot resort to equity, in the absence of some special ground of equitable cognizance. Finally, an administrator *de bonis non* is regarded as directly representing the distributees, and may go into

equity in the first instance whenever and as they may: *Teague v. Corbitt*, 57 Ala. 529; *Weakley v. Gurley's Adm'r*, 60 Ala. 399; *Glenn's Adm'r v. Billingslea*, 64 Ala. 345; *Randle v. Carter*, 62 Ala. 95; *McNeill's Adm'r v. McNeill's Creditors*, 36 Ala. 109; 76 Am. Dec. 320; *Park's Distributees v. Park's Adm'rs*, 36 Ala. 132; *Moore v. Lesueur*, 33 Ala. 237; *James v. Faulk*, 54 Ala. 184; *Hill v. Armistead*, 56 Ala. 118; *Hause v. Hause*, 57 Ala. 262; *Hooper v. Smith*, 57 Ala. 557; *Whorton v. Moragne*, 59 Ala. 641; *Gould v. Hayes*, 19 Ala. 438; *Horton v. Moseley*, 17 Ala. 794; [*Bragg v. Beers*, 71 Ala. 151; *Trawick v. Davis*, 85 Ala. 342; *Shackelford v. Bankhead*, 72 Ala. 476.] In pursuance of the general doctrine, although the jurisdiction of the probate court has attached by proceedings being commenced therein, the court of equity may take cognizance of the administration for the purpose of a final accounting and settlement therein in the following cases: By an administrator, where he has paid moneys belonging to the estate of a deceased wife, by mistake, to the husband's personal representatives, such moneys being distributed and the distributees not being parties to the settlement in the probate court: *Hemphill v. Moody*, 64 Ala. 468; by an executrix, when she is entitled to a decree in her favor for the amount due her for the excess of her disbursements over her receipts, the probate court not being able to render such a judgment: *Reaves v. Garrett's Adm'r*, 34 Ala. 558; when a creditor of the deceased seeks to pursue certain real and personal property standing in the name of a trustee for the debtor's wife and children, alleging that such property was fraudulently transferred by the deceased, and that her estate is insolvent. A court of probate cannot give adequate relief in such a case: *Pharis v. Leachman*, 20 Ala. 662; by an administrator when the distributees seek to charge him with the payment of money, against which he has an equitable defense not available in the probate court: *Stewart's Adm'r v. Stewart's Heirs*, 31 Ala. 207; by the

is still a considerable diversity among the individuals composing each class. In the states of the first class, the

distributees, legatees, etc., when they sue for a discovery of assets which the administrator has failed to return in his inventory: *Wilson v. Crook*, 17 Ala. 59; *Hunley v. Hunley*, 15 Ala. 91; *Dobbs v. Distributees of Cockerham*, 2 Port. 328; where a discovery is necessary: *Horton v. Moseley*, 17 Ala. 794; by the distributees, etc., where assets are withheld by an administrator claiming them as his own by a secret gift: *Blakey v. Blakey's Heirs*, 9 Ala. 391; where there are complicated and numerous matters of account to be settled, and trusts created, which the probate court cannot enforce: *Gould v. Hayes*, 19 Ala. 438; *Apperson v. Cottrell*, 3 Port. 51; 29 Am. Dec. 239. [Where, in the settlement of an insolvent estate, it is desirable that an allotment of homestead be declared invalid, and that the property be sold free of encumbrances: *Brunson v. Brooks*, 68 Ala. 248.] On the contrary, when the administration has begun in the probate court, equity should not assume jurisdiction in the following cases, — the grounds are not sufficient: That the administrator is also guardian of a distributee who has come of age, or that he has committed an error in the allotment of exempt property to a minor child, are not sufficient: *Draper's Adm'r v. Draper*, 64 Ala. 545. Equity will not take jurisdiction and distribute upon a bill filed for an entirely different purpose: *Scott v. Abercrombie*, 14 Ala. 270; and see *Horton v. Moseley*, 17 Ala. 794; *Harrison v. Harrison*, 9 Ala. 470. Equity has jurisdiction to compel a final accounting, settlement, and distribution in the following special cases: Where an administrator has died before making a final account and settlement, the probate court has authority under the code to order an accounting, and decree a settlement of the estate against his personal representatives, but such decree is not conclusive against the sureties of the deceased administrator, nor does it support an action at law against them on the bond; equity, therefore, has jurisdiction in such a case; a bill for a final account and settlement may be filed by the ad-

ministrator *de bonis non* against the personal representatives of the deceased administrator, and the sureties on his bond: *Stallworth's Administrator v. Farnham*, 64 Ala. 259; see also *Chaquette v. Ortet*, 60 Cal. 591; *Bush v. Lindsey*, 44 Cal. 121, 125; where an administrator dies before a final accounting, and his executor is appointed the administrator *de bonis non*, equity alone has jurisdiction to compel an accounting and settlement: *Hays v. Cockrell*, 41 Ala. 75. Equity has jurisdiction to appoint a receiver of the assets, and thus virtually to take control of the administration when necessary for the protection of creditors and legatees from irreparable loss through the acts of the administrator or executor, but the danger of such loss must be manifest: *Randle v. Carter*, 62 Ala. 95; [see also *Walker v. Johnson*, 82 Ala. 347.] Equity has concurrent jurisdiction in the assignment of dower: *Hause v. Hause*, 57 Ala. 262; and has jurisdiction of a suit to foreclose a mortgage upon the estate of a deceased mortgagor: *Gayle v. Singleton*, 1 Stew. 566; and of a suit by a distributee to compel payment of his distributive share as determined by the final settlement of the probate court: *Cherry v. Belcher*, 5 Stew. & P. 133; and has concurrent jurisdiction of suits by legatees, and exclusive jurisdiction when the relief demanded involves the execution of a trust, or a discovery, or the taking an account: *Pearson v. Darrington*, 18 Ala. 348; and wherever the jurisdiction of the probate court is imperfect: *Leavens v. Butler*, 8 Port. 380. Where a ward dies, and his guardian is appointed his administrator, equity has jurisdiction to compel a final accounting and settlement against him in both capacities: *Carswell v. Spencer*, 44 Ala. 204. Where an executor is domiciled in another state, a legatee may proceed in equity against him for an account and payment: *Colbert v. Daniel*, 32 Ala. 314. [See also *Walker v. Johnson*, 82 Ala. 347. Where there has been no administration, but the heirs or next of kin have settled and divided the estate by voluntary arrangement among

original equitable jurisdiction over administrations remains unabridged by the statutes, concurrent with that

themselves, a creditor may maintain a suit to compel the payment of his demand out of the property, without the necessity of taking out an administration: *Cameron v. Cameron*, 82 Ala. 392; citing the text of this paragraph, *post*, p. 1758.] On the other hand, in respect to the admission of wills to probate, the jurisdiction of the orphans' court is exclusive; there is no need of a resort to equity in case of a destroyed will; the orphans' court can grant probate: *Apperson v. Cottrell*, 3 Port. 51; 29 Am. Dec. 239. Equitable jurisdiction after a final decree by the probate court: In the absence of fraud or some other element of special equitable cognizance, a court of equity has no power to interfere with the final decree of the orphans' court: *King v. Smith*, 15 Ala. 264. The decree of a court of probate, on a final settlement of the administration, being complete, is of equal dignity, and as final and conclusive as the judgment of a court of law or decree of a court of chancery. Equity will not interfere with a decree of a court of probate, nor detract from its conclusiveness, nor reopen the litigation unless on facts or grounds of which the party complaining could not have availed himself, when the decree was rendered, because of accident, or fraud, or act of his adversary, unmixed with fault or negligence on his part: *Waring v. Lewis*, 53 Ala. 615; *Gamble v. Jordan*, 54 Ala. 432; *Bowden v. Perdue*, 59 Ala. 409; [*Humphreys v. Burleson*, 72 Ala. 1; *Waldrom v. Waldrom*, 76 Ala. 285;] but the decree of the probate court, in order to be thus conclusive, must be actually complete; when the settlement in the orphans' court, though purporting to be final, actually remains to be completed as to various sums, and there are still assets in the hands of the administrator unadministered, equity may take jurisdiction for a final accounting and settlement: *Dement v. Boggess's Adm'rs*, 13 Ala. 140. It is the universal rule in Alabama that when the court of equity has, and has assumed, jurisdiction of an administration for any particular purpose, however special and partial, it may and will retain the jurisdiction

for all purposes, and go on to a final accounting, settlement, and distribution of the estate. In doing so, it will be governed by the same rules of law which would control the probate court in determining the rights of the parties, but will follow the rules of procedure belonging to courts of equity. If proceedings had already been commenced in the probate court, they are suspended, and the court of equity will, if necessary, restrain the parties from any further prosecution of those proceedings: *Hause v. Hause*, 57 Ala. 262 (assignment of dower); *Cowles v. Pollard*, 51 Ala. 445 (construction of a will); [*Carroll v. Richardson*, 87 Ala. 605 (same);] *Pearson v. Darrington*, 21 Ala. 169; *Stewart's Adm'r v. Stewart's Heirs*, 31 Ala. 207; *Wilson v. Crook*, 17 Ala. 59 (discovery of assets); *Taliaferro v. Brown*, 11 Ala. 702; *Hall v. Heirs of Wilson*, 14 Ala. 295; *Gayle v. Singleton*, 1 Stew. 566 (foreclosure of a mortgage); *Hunley v. Hunley*, 15 Ala. 91 (discovery); *Blakey v. Blakey's Heirs*, 9 Ala. 391; [*Bragg v. Beers*, 71 Ala. 151; *Sharp v. Sharp*, 76 Ala. 312.]

Arkansas.—The system prevailing in this state is very different from that of Alabama, and the equitable jurisdiction is confined within the narrowest limits. It is the settled doctrine that the probate court has the exclusive jurisdiction to grant and revoke letters of administration and testamentary, to pass upon all questions touching the bonds of administrators and executors, to call executors and administrators to account, and to decree final settlement. A court of equity has no jurisdiction, in general, over administrators, or to withdraw an administration from the probate court, to assume cognizance thereof, and compel a settlement. The clause in the state constitution conferring jurisdiction in matters of equity upon the circuit courts does not conflict with this conclusion, *because the settlement of an estate is not a matter of equity*. (This ruling, it will be seen, is directly opposed to that of the Alabama and California courts.) The only exception to this general doctrine arises in cases where there has been

possessed by the probate courts. In many of them a suit for the administration, settlement, and distribution of an

fraud or waste in the process of administration of such a nature that the relief given by the probate court would not be adequate: *Moren v. McCown*, 23 Ark. 93; *Reinhardt v. Gartrell*, 33 Ark. 727; *Mock v. Pleasants*, 34 Ark. 63; *Flash v. Gresham*, 36 Ark. 529; *Haag v. Sparks*, 27 Ark. 594; *Shegogg v. Perkins*, 34 Ark. 117; [*Jones v. Graham*, 36 Ark. 383; *Jackson v. McNabb*, 39 Ark. 111; *Nathan v. Lehman*, 39 Ark. 256; *Trimble v. James*, 40 Ark. 401; *Dyer v. Jacoway*, 42 Ark. 190; 50 Ark. 222; *Turner v. Rogers*, 49 Ark. 51; *McLeod v. Griffith*, 51 Ark. 1; *Brice v. Taylor*, 51 Ark. 80.] In cases of fraud or waste during the process of administration which cannot be relieved against by the probate court, equity may interfere while the administration is pending in the probate court, or even after its final decree. Thus where the removal of the fraudulent administrator by the probate court would not have disclosed the fraud, nor canceled a deed obtained through fraud or duress, equity may interpose and control the proceedings and give relief after the final decree in probate. But such interposition of equity on the ground of fraud or waste of assets is merely *corrective*; it does not enable the court of equity to go on with the administration and compel a final accounting and settlement; if further proceedings in the matter of a settlement and distribution are necessary, the cause must be remitted to the probate court, and the final settlement must be completed in that tribunal in accordance with the corrections made by the court of equity: *Freeman v. Reagan*, 26 Ark. 373; *Reinhardt v. Gartrell*, 33 Ark. 727; *Shegogg v. Perkins*, 34 Ark. 117; [*Hankins v. Layne*, 48 Ark. 544.] When an executor or administrator dies, a suit in equity cannot be maintained by the administrator *de bonis non* or by the public administrator against the personal representatives or sureties of the deceased to hold them accountable for property of the estate lost, wasted, or converted by the deceased: *State v. Rottaken*, 34 Ark. 144; *contra* in Alabama and California. Where a suit in equity is maintainable against an

executor or administrator, and the relief sought is purely equitable, the court will not allow stale demands, although not barred by the statute of limitations: *Martin v. Campbell*, 35 Ark. 137.

California. — The probate system in this state is very comprehensive, detailed, and complete, embracing not only administrations proper, but the appointment of guardians, and the supervision of the wards' estates in their hands. It may be added, in order to explain passages in judicial opinions which might appear strange to lawyers in other states, that the real as well as the personal estate of the deceased falls within the scope of the administrator's or executor's functions to be administered. Upon the death of an owner intestate, the title to his land does not immediately and absolutely vest in the heirs; they derive their title, if not directly from the administrator, at least *through* him, and not until the estate is fully administered. Under the present judicial system, the probate jurisdiction is given to the single court of original, general jurisdiction in law and in equity, — the superior court, — so that there is no separate probate tribunal. The proceedings in this superior court for a final accounting, settlement, and distribution are *virtually* the same as upon a bill in chancery in an administration suit. It would have been well, in my opinion, to have abandoned the *name* of a separate probate jurisdiction, and to have called the proceedings in administration a branch of the equitable jurisdiction held by the superior court as a court of equity. With regard to the equitable jurisdiction exercised by the "civil action," distinct from the statutory probate proceedings, there appears to be some conflict in the decisions, or at least in the judicial *dicta*. This apparent conflict may, however, have been ended by the very recent case of *Rosenberg v. Frank*, quoted in a preceding note. The *ratio decidendi* in that case is the broad principle that the *affirmative* grant, either in statutes or in the constitution, of jurisdiction to the probate court, does not

estate may be brought, as a matter of course, in a court of equity in the first instance, instead of in the court of

destroy nor lessen the general jurisdiction in equity conferred upon other courts, and that this general equitable jurisdiction includes administrations. Alabama decisions are cited with approval as sustaining this conclusion. These Alabama cases also hold that resort may always be had in the first instance to a court of equity instead of to a court of probate, and this is a necessary consequence of the principle. The courts of California, however, have not followed the principle to this length, and probably they will not. On the contrary, they expressly hold that parties cannot resort to equity in matters of administration except upon some special ground of exclusive equitable cognizance. Some of the later decisions, laying down this rule very emphatically, seem to be somewhat conflicting with the course of decision in *Rosenberg v. Frank*. So far as any such conflict exists, the most recent and authoritative decision in *Rosenberg v. Frank* must be regarded as limiting the expressions of opinion in some of these late cases, and as returning to the more liberal view of the equitable jurisdiction taken by several of the earlier California cases, which are cited and approved: [*Williams v. Williams*, 73 Cal. 99. Some doubt has been cast on the authority of *Rosenberg v. Frank* on the question of jurisdiction. In *Siddall v. Harrison*, 73 Cal. 560, it is pointed out that only a minority of the court concurred in the opinion of Thornton, J., in the former case, on the question of the jurisdiction, and that that case, as well as *Payne v. Payne*, 18 Cal. 292, and *Williams v. Williams*, 73 Cal. 99, were, in a sense, consent cases, as no one objected to the jurisdiction, and all parties interested desired the decision. It was held in *Siddall v. Harrison* that a court of equity is not bound to entertain an action brought to construe a will which has been duly admitted to probate, and should not do so, except in a case where there is some special reason for seeking its interposition; nor, in the absence of special reasons shown, can a person claiming to be the heir, but who takes nothing under the

will, maintain an action in equity for the purpose of determining his heirship, and having the residuary and other legacies in the will pronounced invalid, pending proceedings in probate for the settlement of the estate.] It is held that the probate court has exclusive jurisdiction of administrations, under all ordinary circumstances, of the accounting of executors and administrators, so that no suit in equity can be maintained in the first instance for an accounting or distribution; whatever jurisdiction in equity exists is wholly corrective: *Auguisola v. Arnaz*, 51 Cal. 435. A court of equity has, therefore, no jurisdiction of an action against an administrator seeking to charge the estate with the expenses of administration; *Gurnee v. Maloney*, 38 Cal. 85; 99 Am. Dec. 352; nor over the allowance of commissions to executors or administrators: *Hope v. Jones*, 24 Cal. 89; and if no court of equity can interfere with the final settlement and decree of a court of probate, it cannot set aside such decree on the ground of fraud, or other like ground of equitable cognizance, and leave the parties to make another settlement in probate; and it is even doubtful whether equity could interfere at all, unless an opportunity to open the account or to appeal from the decree had been lost: *Hope v. Jones*, 24 Cal. 89; nor has a court of equity jurisdiction of an action by a ward against his guardian to compel an accounting; the jurisdiction to determine the accounts between guardian and ward belongs exclusively to probate: *Allen v. Tiffany*, 53 Cal. 16. Under the existing organization of the courts, a court of equity or of law has no jurisdiction to try issues of fact framed in the court of probate: In the Matter of the Will of Bowen, 34 Cal. 682; for former practice on the trial of such issues, see *Pond v. Pond*, 10 Cal. 495. (It is certainly very difficult to reconcile some of these cases, or the grounds upon which their ruling is based, with the *ratio decidendi* in *Rosenberg v. Frank*, *supra*, especially as they were all determined under the same constitutional provision.) On the other hand, equity has jurisdiction

probate. In most, the general principle regulating the exercise of all concurrent jurisdiction prevails, that when

in the following cases: Where an executor or administrator had died without rendering a final account, equity has jurisdiction of a suit, by the administrator *de bonis non* to compel his personal representatives to account, and the judgment therein is conclusive upon the sureties of the deceased executor or administrator. This case is omitted from the powers conferred upon the court of probate, and that court has no jurisdiction except what is expressly given to it by the statute: *Chaquette v. Ortet*, 60 Cal. 594; *Bush v. Lindsey*, 44 Cal. 121 (this rule agrees with decisions in Alabama); where a settlement purporting to be final has been decreed by the probate court, a person who was not an actual party to it may maintain a suit in equity against the administrator, and compel him to a full and final accounting, treating the former settlement as a nullity: *Clarke v. Perry*, 5 Cal. 58; 63 Am. Dec. 82; *Deck v. Gerke*, 12 Cal. 433; 73 Am. Dec. 555; and a court of equity may also take jurisdiction of the settlement of an estate when there are peculiar circumstances of difficulty and embarrassment in its administration, and when the assuming of jurisdiction would prevent great delay, expense, inconvenience, and waste, and thus conclude by one action and decree a protracted and vexatious litigation: *Deck v. Gerke*, *supra* (these two cases are cited and approved in *Rosenberg v. Frank*); equity has exclusive jurisdiction of actions to compel the enforcement of trusts created by will, to call the trustee to an account, and to perform his trust duties: *Haverstick v. Trudel*, 51 Cal. 431; *Auguisola v. Arnaz*, 51 Cal. 435; and of actions against the administrator and heirs of a deceased mortgagor, to foreclose a mortgage: *Meyers v. Farquharson*, 46 Cal. 190; *Willis v. Farley*, 24 Cal. 490, 500; a court of equity has jurisdiction of a suit to set aside a decree of a probate court obtained by fraud: *Sanford v. Head*, 5 Cal. 297; but see *Hope v. Jones*, 24 Cal. 89 (the case of *Sanford v. Head* is cited with approval in *Rosenberg v. Frank*); and has jurisdiction of a suit by the administrator of a deceased partner against

the survivors to compel a settlement of the partnership affairs; the jurisdiction given to the probate court in the administration of the decedent's estate does not interfere with the general equitable jurisdiction over such causes: *Griggs v. Clark*, 23 Cal. 427. It was held in an early case that the court of equity has the same control over the persons and estates of infants which the court of chancery in England possesses: *Wilson v. Roach*, 4 Cal. 362; but this can hardly be true under the existing statutes: See *Allen v. Tiffany*, 53 Cal. 16. The court of probate has exclusive jurisdiction in the matters relating to the probate of wills; and every will must be regularly admitted to probate, before it can be given in evidence in any court in support of a title under it: *Castro v. Richardson*, 18 Cal. 478.

Connecticut. — The courts of probate have not only a complete jurisdiction over all matters of administration and the settlement and distribution of estates, but are clothed with large equitable powers in granting reliefs and determining rights of property. Their jurisdiction, except under some very exceptional circumstances, is exclusive; equity has no jurisdiction over administrations, either in the first instance or by way of correcting errors in probate proceedings, under all ordinary circumstances. For example, the court of probate has full power to correct inventories, to compel the filing of additional inventories, and to settle the accounts of executors and administrators upon a basis of equity. That specific legacies are given by ambiguous language, that there are difficulties in the settlement arising from conveyances of land by the executors pursuant to covenants of the testator, and from their acceptance of mortgaged lands in lieu of the debts due to the deceased secured by the mortgages thereon, are not sufficient grounds to make the interference of equity either necessary or proper: *Beach v. Norton*, 9 Conn. 182; *Pitkin v. Pitkin*, 7 Conn. 315 (suit by executors to charge real estate of testator with expenses incurred in the administration); *Bailey v. Strong*, 8 Conn. 278

either court has assumed jurisdiction of a particular case, the other tribunal will not ordinarily interfere. These

(where an insolvent heir indebted to the estate to the full amount of his share therein had fraudulently assigned his interest in the estate, equity will not interfere; full power in the probate court); *Sheldon v. Sheldon*, 2 Root, 512; *Gates v. Treat*, 17 Conn. 388 (equity will not correct an error in carrying out the final settlement and distribution in the probate court). Probate court has full power to correct any error made in a prior and partial settlement, and to do equity among the parties interested, and there is no jurisdiction in courts of equity for such a purpose: *Mix's Appeal*, 35 Conn. 121; 95 Am. Dec. 222. On the other hand, equity has full and exclusive jurisdiction over all trusts of real or personal property created by will, of calling the trustees to account, of settling their accounts and compelling a performance of the trust; the probate jurisdiction does not extend to trusts: *Cowles v. Whitman*, 10 Conn. 121; 25 Am. Dec. 60; *Parsons v. Lyman*, 32 Conn. 566; *Prindle v. Holcomb*, 45 Conn. 111. Illustration of the extraordinary circumstances under which the equitable jurisdiction exists: All the heirs signed an agreement that the estate should be settled in the probate court, in accordance with the draught of a will prepared, but not executed, by the deceased. One of these heirs, who was weak-minded and ignorant of his rights, and who claimed to have been unduly influenced by the others to sign the agreement, whereby he relinquished a larger interest than he received, filed a bill in equity to set aside the agreement, and to enjoin the proceedings in the probate court under it; held, that courts of probate have sole jurisdiction in all ordinary matters relating to the settlement of estates, but that this was an *extraordinary* matter, and equity had jurisdiction.

Georgia. — There is some discrepancy among the decisions, chiefly arising, however, from the different statutory systems prevailing at different periods. It may be accurately stated, as a general description of the present condition, that while the jurisdiction of probate is sufficient for all

ordinary purposes, so that courts of equity will not interfere under ordinary circumstances to *exercise* a jurisdiction which they really possess, yet the equitable jurisdiction will be exercised freely, where the circumstances are special, and where equitable relief is needed, which cannot adequately be conferred by the probate courts. The extent of the equitable jurisdiction is far greater than in Arkansas and Connecticut, and greater perhaps than in California, but more circumscribed than in Alabama. In some of the earlier cases, under the then existing statutes, it was held that the general equitable jurisdiction over administrations existed, substantially the same as that possessed by the English court of chancery; that when a court of equity had obtained jurisdiction over a case of administration, and the administrator is removed from office, it may appoint a receiver who could dispose of the assets and settle the estate under a decree of the court: *Walker v. Morris*, 14 Ga. 323; *Mills v. Lumpkin*, 1 Ga. 511; 44 Am. Dec. 677. Later cases described the probate jurisdiction over matters of accounting, final settlement, and distribution as exclusive under ordinary circumstances, and held that equity could only interfere to grant relief which a court of probate *cannot* and a court of equity *can* give: *Slade v. Street*, 27 Ga. 17; *Perkins v. Perkins*, 21 Ga. 13; *Moody v. Ellerbie*, 36 Ga. 666. Finally, the very recent cases, under existing statutes, admit a broader equitable jurisdiction in the matter of ordinary administrations. It is held that a concurrent jurisdiction of equity over the matter of accounting and settlement by administrators is specially retained by the Code of 1873, sec. 2600: *Ewing v. Moses*, 50 Ga. 264; [*Johnston v. Duncan*, 67 Ga. 61; *McCook v. Poud*, 72 Ga. 150; *McGowan v. Lufburrow*, 82 Ga. 523; 14 Am. St. Rep. 178]; still it is said that there should be a strong cause to authorize a court of equity to exercise this jurisdiction, and to interfere with the regular administration of an estate: *Mayo v. Keaton*, 54 Ga. 496; and see *Collins v. Stephens*, 58 Ga. 234. The follow-

states are Alabama, Illinois, Iowa, Kentucky, Maryland, Mississippi, New Jersey, North Carolina, Rhode Island,

ing are particular conditions of fact, or instances of particular relief, in which equity has jurisdiction: *Marshaling of assets*: Equitable suits for the marshaling of assets will be maintained whenever such relief is actually required, and is sought to be obtained; but the mere fact that there are numerous claims against the estate, or that the estate is insolvent, does not constitute a case for marshaling: *Bryan v. Hickson*, 40 Ga. 405; *Irvin v. Creditors of Bond*, 41 Ga. 630; *Jeter v. Barnard*, 42 Ga. 43; [Stephens v. James, 77 Ga. 139.] *Destroyed will*: It has been held that equity has no jurisdiction of a suit to establish a will destroyed by accident, since the powers of the probate court are ample in such a case: *Slade v. Street*, 27 Ga. 17; *Perkins v. Perkins*, 21 Ga. 13 (equity will interfere only in case of destruction by *spoliation*); but as equity has jurisdiction in cases of fraud, it may entertain a suit to establish a will destroyed by fraud, notwithstanding the exclusive jurisdiction in general of the court of ordinary over probate matters: *Harris v. Tisereau*, 52 Ga. 153; 21 Am. Rep. 242; equity, however, has no jurisdiction to establish a copy of a lost will: *Ponce v. Underwood*, 55 Ga. 601. *Fraud or waste*: Equity has a corrective jurisdiction in cases of fraud or waste in the course of an administration or settlement, except fraud in the execution of a will; thus a court of equity may set aside letters of administration procured by fraud, and require the administrator to account for and pay over to the lawful foreign executor the assets received by him: *Wallace v. Walker*, 37 Ga. 265; 92 Am. Dec. 70; and may entertain a suit by a ward against an administrator for various equitable relief against the latter's fraud and waste: *Ware v. Ware*, 42 Ga. 408; and has jurisdiction in all cases of fraud, except fraud in the execution of a will: *Harris v. Tisereau*, 52 Ga. 153; 21 Am. Rep. 242; a court of equity has no jurisdiction, therefore, to set aside a will regularly admitted to probate, and to declare the same, or any part thereof, null and void: *Tudor v. James*, 53

Ga. 302; see *ante*, vol. 2, § 913; where the heirs agree to distribute an estate without a regular administration in the probate court, and appoint an agent for that purpose, and put him in possession of the property, a suit in equity against him by one or more of the distributees may be maintained, as against an administrator: *Moore v. Gleaton*, 23 Ga. 142; a husband procured a policy of life insurance for the benefit of his wife and children. On his death the amount was paid to the widow, and she paid it over to her father, who was co-administrator with her of her husband's estate. The father died without accounting for this fund in his hands. The children bring a suit in equity against the executor of this deceased father for an account and payment of the fund. Held, that the suit should have been brought by the widow, and the children could not maintain it without adding her as a party defendant, and showing why she did not sue herself as the plaintiff: *Fletcher v. Collier*, 61 Ga. 653. [It was held in *Bailey v. Ross*, 68 Ga. 735, that where, after due notice, leave has been regularly granted by the court of ordinary (probate) to an administrator to sell realty of a decedent, equity will not restrain the sale by injunction at the instance of an heir on account of reasons—as that there were no debts against the estate—which could have been as readily urged at the time when such order was granted; but it is said in a similar case that where the estate is ready for distribution, and this is asked for in the bill, equity may assume jurisdiction, and incidentally enjoin the administrator from making such a sale: *McCook v. Pond*, 72 Ga. 150.] *Equitable remedies of creditors*: When an estate has been settled and distributed, and the executor discharged by a decree of the probate court rendered with the consent of the heirs, a creditor who subsequently obtained a judgment against the estate may maintain a suit in equity upon it against the heirs to reach the property distributed to them, the executor being insolvent: *Long v. Mitchell*, 63 Ga. 769; and a judgment creditor of the

Tennessee (in certain special cases), Virginia [West Virginia], District of Columbia, and the United States courts.

estate may sue in equity to reach assets already distributed, when the executor is a non-resident and insolvent, and all the assets are distributed, the executor himself being a devisee and being made a defendant. In such a case, if the executor has committed waste, his share should be first applied in discharge of the judgment, before taking the shares of other devisees: *Redd v. Davis*, 59 Ga. 823.

Illinois. — The theory is admitted by later as well as earlier cases in this state that equity retains a general jurisdiction over administrations, concurrent with, but paramount to, that possessed by the probate courts, and the only practical question is, When will that jurisdiction be exercised? The earlier decisions allowed its exercise somewhat more freely than is done by the later ones; they seem to have permitted a resort to equity in the first instance, instead of to the probate court, for the purpose of an accounting and final settlement, without any special ground alleged; and also for the purpose of re-examining and correcting a settlement made by a probate court, with which a party was dissatisfied: *Grattan v. Grattan*, 18 Ill. 167; 65 Am. Dec. 726; *Mahar v. O'Hara*, 4 Gilm. 424; *Jennings v. McConnel*, 17 Ill. 148; *Heward v. Slagle*, 52 Ill. 336. The more recent cases, while fully admitting the existence of this jurisdiction, have repeatedly declared the rule to be: "Courts of equity will not exercise jurisdiction over the administration of estates except in extraordinary cases; some special reason must be shown why the administration should be taken from the probate court": *Freeland v. Dazey*, 25 Ill. 294; *Townsend v. Radcliffe*, 44 Ill. 446; *Garvin v. Stewart's Heirs*, 59 Ill. 229; *Harris v. Douglas*, 64 Ill. 466; *Blanchard v. Williamson*, 70 Ill. 647; *Heustis v. Johnson*, 84 Ill. 61; *Crain v. Kennedy*, 85 Ill. 340; *Hales v. Holland*, 92 Ill. 494; [*Harding v. Shepard*, 107 Ill. 264; *Winslow v. Leland*, 128 Ill. 304.] The following are examples of such special facts in which this concurrent jurisdiction is properly exercised: Where a court of probate ordered

an administrator to pay over money in his hands to the person *legally* entitled to receive it, without determining who were *equitably* entitled to the fund: *Townsend v. Radcliffe*, 44 Ill. 446; a suit by a creditor against an administrator for an accounting and a sale of land for purpose of satisfying the claim, where the court of probate had committed error in passing upon the demand, and all the papers and records in the probate court had been destroyed by accidental fire: *Clark v. Hogle*, 52 Ill. 427; in a case involving complicated equities, a court of equity may entertain a creditor's suit against the heirs of a deceased debtor, and may then retain the case, in order to decree a final settlement: *Garvin v. Stewart's Heirs*, 59 Ill. 229; where the payment of debts is made a charge on the testator's real estate, equity has jurisdiction in the first instance, on the ground of its jurisdiction over trusts: *Harris v. Douglas*, 64 Ill. 466; see also case of a special agreement for distribution and accounting made by heirs and devisees: *Pool v. Docker*, 92 Ill. 501. In the following cases the facts are not sufficient to admit the exercise of this equitable jurisdiction: Equity will not take jurisdiction of a suit to establish a simple legal claim or debt, where there are no equitable incidents: *Hales v. Holland*, 92 Ill. 494; *Armstrong v. Cooper*, 11 Ill. 560; even that the claim is equitable is not of itself sufficient: *Garvin v. Stewart's Heirs*, 59 Ill. 229; one of several executors cannot call his co-executors to account in equity: *Crain v. Kennedy*, 85 Ill. 340; it is not a sufficient ground for a suit in equity by a creditor that he has not presented his claim, and that the presentation was barred by the statutory period of limitation, that the administrator was discharged by order of the probate court, and that there were assets not inventoried: *Blanchard v. Williamson*, 70 Ill. 647. [A court of equity will not ordinarily assume jurisdiction until the claimant shall have exhibited his claim and had it allowed in the county (probate) court, and then, if any special reasons that may be deemed sufficient can be assigned why that court cannot afford

In the states of the second class, the jurisdiction of the probate courts over everything pertaining to the regular

the requisite relief, equity will assist him, but not otherwise; in this respect, judgment creditors, except so far as their judgments are liens on real estate, and simple contract creditors, are on the same footing. For waste by, or fraud, mistake, or incompetency of, the administrator, relief may be had in the county court. The fact that the administrator failed, through fraud or negligence, to collect assets in the hands of surviving partners of the intestate is not sufficient ground for the interposition of a court of equity: See *Winslow v. Leland*, 128 Ill. 304.] In the following cases equity has an exclusive, or at least a certain, jurisdiction: Where a legacy is charged upon land devised, equity has jurisdiction of its enforcement, on the ground of trust, and courts of equity have jurisdiction in all cases of legacies: *Mahar v. O'Hara*, 4 Gilm. 424; where the object of a suit is to charge an administrator for violating the duties of his trust in regard to land, a court of equity not only has jurisdiction, but is the only court which can give adequate relief: *McCreedy v. Mier*, 64 Gilm. 495; heirs who are dissatisfied with the settlement of an estate which is complicated should proceed by bill in equity, and not by appeal from the decree of the probate court: *Heward v. Slagle*, 52 Gilm. 336; sec. vol. 1, § 349, note 1. [An act which gives a probate court jurisdiction of claims against estates, when the decedent has received money in trust for any purpose, does not confer on those courts exclusive jurisdiction; the legislature has no power to deprive circuit courts of equity jurisdiction over trusts: *Howell v. Moores*, 127 Ill. 67.]

Indiana.—Under the earlier statutes it was held that the probate courts had jurisdiction of all matters of administration, and the decrees of final settlement made therein were *prima facie* correct, and that a court of equity could only interfere with such decrees or with pending administrations in clear cases of fraud or mistake, but the jurisdiction *did* exist to correct fraud or mistake: *Allen v. Clark*, 2 Blackf. 343; *Brackenridge v. Holland*,

2 Blackf. 377; 20 Am. Dec. 123; *Murdock v. Holland's Heirs*, 3 Blackf. 114. Where the guardian of A's children had died without accounting, and not leaving personal property sufficient, and the accounts were complicated, a suit in equity by these children and A's representatives against the guardian's personal representatives and heirs for an accounting and settlement, was held proper: *Peck v. Braman*, 2 Blackf. 141. Under the existing statutory system (2 Rev. Stats., p. 17, and act of March 6, 1873, sec. 79), the probate jurisdiction held by the circuit courts over all probate and testamentary matters, and over administrations, the accounting, settlement, and distribution of decedents' estates, is practically exclusive: *Ex parte Shockley*, 14 Ind. 413; *Williams v. Perrin*, 73 Ind. 57; *Ramsey v. Fouts*, 67 Ind. 78; *Heaton v. Knowlton*, 65 Ind. 255; *Noble v. McGinnis*, 55 Ind. 528; *Alexander v. Alexander*, 48 Ind. 559. Notwithstanding this general conclusion, it seems hardly possible that the original and most salutary jurisdiction of equity over fraud and mistake has been entirely abrogated so as to prevent a court of equitable powers from setting aside or correcting any case of fraud or mistake in an administration, however clear, although no recent cases involving this question seem to have arisen. It is plain that the equitable jurisdiction in this state is confined within the narrowest limits.

Iowa.—The decisions in this state are few, but they show very clearly that a large *original*, as well as *supervisory* or *corrective*, jurisdiction in equity is left unaffected by statutes; that the probate system is not complete, does not extend to many matters of a distinctively equitable cognizance, and over such matters the jurisdiction of equity will be exercised without question. Substantially, a concurrent jurisdiction in equity *exists*, and the practical inquiry is, When will it be exercised? Ordinary claims against an estate come within the probate jurisdiction, but this does not apply to matters of an equitable nature, of which a court of chancery has cognizance. The probate jurisdiction

administration and settlement of decedents' estates is virtually exclusive. The equitable jurisdiction over the

over all matters connected with the settlement of estates is not exclusive; the equitable jurisdiction is not taken away expressly, or by any fair construction of the statutes. The probate court has not the power to entertain a suit by creditors to compel the administrator to sell real estate; jurisdiction of such a suit must be confined to equity: *Waples v. Marsh*, 19 Iowa, 381. Under the statute, a will admitted to probate may be contested either by appeal, or by an *original* suit in the court of equity: *Havelick v. Havelick*, 18 Iowa, 414; and equity has jurisdiction to set aside and declare void probate proceedings, on the ground of their fraud: *Cowin v. Toole*, 31 Iowa, 513. Still, the circuit court, as a court of equity, will not review and correct the acts of an administrator while the administration is pending, — that is, will not remove a pending administration from the control of probate: *Hutton v. Laws*, 55 Iowa, 710.

Kansas. — While the decisions in this state are very few, they clearly show that the grant of a broad jurisdiction to the probate courts is not regarded as having destroyed the original jurisdiction of equity over administrations, but it still exists concurrently with that of the probate courts. Although the concurrent jurisdiction of equity thus *exists*, it is practically exercised only as an ancillary, supplementary, and corrective jurisdiction; it is invoked under circumstances or to grant reliefs where the powers and remedies of probate are inadequate, and to correct the proceedings of the probate court where there is fraud, mistake, or perhaps plain error; but it will not interpose with a pending administration, where the estate is still unsettled, in order to determine matters which come within the probate jurisdiction and over which the probate powers are certain and adequate. While *all* these conclusions are not, perhaps, expressly formulated by any of the decisions, they seem to be necessarily involved in or implied by those decisions. In an equitable suit by an administrator *de bonis non* to subject certain lands

of the estate to the payment of claims which had been adjudged, upon final settlement in the probate court to be due to the administrator, held, that the court of equity had jurisdiction; that the grant of jurisdiction to the probate courts was not intended to limit the jurisdiction of equity in such matters: *Shoemaker v. Brown*, 10 Kan. 383. On the other hand, where a creditor, whose claim was allowed by the probate court, sought to have lands of the estate sold in satisfaction, it was held that in such a case, where the creditor had no specific lien on the land, and the administration was still pending in the probate court, the remedy given by the probate court was adequate, and therefore the jurisdiction of equity would not be exercised. The probate court had ample powers to order the administrator to sell land, for payment of debts, when there was a deficiency of personal assets, and the creditor should resort to this statutory method, and not to a suit in equity: *Johnsou v. Cain*, 15 Kan. 532. This decision undoubtedly conforms to the rule prevailing in the great majority of states, where power to sell land under the direction and control of the probate court is given to an administrator.

Kentucky. — The equitable jurisdiction in this state is broad, — concurrent with that of the probate courts, so that parties *may* in the first instance proceed by a suit in equity for an accounting and final settlement; but ordinarily, the court which first assumes jurisdiction of an administration will retain it unto the end, without interference with the other. Equity has also a jurisdiction in special cases, where the powers of the probate court are not adequate, or perhaps do not at all exist. The equitable jurisdiction over administrations is not taken away by the statutes. Courts of chancery may entertain jurisdiction of suits for a final accounting, settlement, and distribution: *Moore v. Waller's Heirs*, 1 A. K. Marsh. 488. But this jurisdiction is concurrent with that possessed by the probate courts, and in general, the

subject is neither concurrent nor auxiliary and corrective. It exists only in matters which lie outside

first court which assumes jurisdiction of an administration may retain it. If a suit had been commenced in chancery, any subsequent proceedings by way of settlement in the probate court would be nugatory, or would not be permitted; and conversely, if proceedings for a settlement had been begun in the probate court, a court of chancery would not, under ordinary circumstances, interfere with the administration: *Saunders's Heirs v. Saunders's Ex'rs*, 2 Litt. 314; *Blackerby v. Holton*, 5 Dana, 520. There are, however, special cases in which equity will exercise its jurisdiction because the powers and reliefs of the probate court are inadequate, or perhaps do not exist. Where an executor, at the request of heirs and devisees, sold a negro, taking a note for the price to himself as executor, the remedy of the heirs and devisees for their share of the note or purchase-money is by suit in equity: *Cartmel v. Rench*, 2 J. J. Marsh. 118. After an administrator has distributed the estate among the heirs, a creditor whose debt has not been paid, and who had obtained no judgment, may resort to equity for relief: *Stroud's Heirs v. Barnett*, 3 Dana, 391. A suit in equity is also proper to obtain a discovery of assets and appropriation thereof in satisfaction of a judgment which the plaintiff had recovered against the administrator, on which the execution had been returned unsatisfied: *Pilkington's Ex'x v. Gaunt's Adm'x*, 5 Dana, 410. A court of equity has jurisdiction of a suit to annul and set aside settlement made by an executor in the probate court, on the ground of fraud, or to obtain a discovery of assets; and having assumed jurisdiction for such a purpose, the court will retain the suit and give full and final relief: *Speed's Ex'r v. Nelson's Ex'r*, 8 B. Mon. 499, 507. A suit in equity for an accounting may be maintained by an administrator *de bonis non* against the personal representatives and heirs of a deceased administrator, who died before the estate was settled: *Bellomy's Adm'r v. Bellomy*, 3 Bush, 109. (The same rule prevails in Alabama and California.) A court of

equity will not entertain a suit to establish a lost will, when the same relief can be granted by a probate court: *Hunt v. Hamilton*, 9 Dana, 90.

Maine. — From the limited nature of the equity jurisdiction conferred by statute, hitherto held by the courts of this state: See *ante*, vol. 1, §§ 286, 322-337; and from the absence of decided cases in which any such jurisdiction has been exercised, — it appears that the equitable jurisdiction in matters connected with administrations is extremely narrow, — that it is confined, in fact, to testamentary trusts and to the construction of wills as a branch of the general jurisdiction over trusts. The jurisdiction of probate over all matters connected with the settlement of the estates of decedents appears to be virtually exclusive; the instances in which equity can interfere, in addition to the two above mentioned, seem to be referable to some other distinct head of equity jurisdiction, — such, for example, as that in aid of creditors whose remedies at law have been exhausted, or perhaps that of fraud. An administrator of an insolvent estate is entitled to the aid of a court of equity to reach property of the deceased, for the purpose of satisfying the claims of creditors, which has been conveyed or is held in fraud of the rights of such creditors; but his legal remedies must be exhausted before resorting to equity: *Caswell v. Caswell*, 28 Me. 232; *Fletcher v. Holmes*, 40 Me. 364; [*Frost v. Libby*, 79 Me. 56;] but while the administrator may thus invoke the aid of equity, a creditor of the deceased, who has not exhausted his legal remedies, cannot maintain a suit to have such property appropriated in payment of his debt: *Caswell v. Caswell*, *supra*. A had obtained a decree in an equitable suit against the administratrix of B, brought to procure a deposit made by B in a bank, and pledged to A as security for a debt due him by B, to be paid to him. Upon the subsequent death of the administratrix, A brought a second suit in equity against the administrator *de bonis non* of B to recover indemnity for certain extraordinary expenses in the first litigation

of the regular course of administration and settlement, which are of purely equitable cognizance, and which

caused by the fraud of the administratrix. Held, that the suit could not be maintained: *Boynton v. Ingalls*, 70 Me. 461. Equity has a complete jurisdiction over trusts created by wills, for the enforcement of the trusts and the control of the trustees: *Richardson v. Knight*, 69 Me. 285, 289; *Nason v. First etc. Church*, 66 Me. 100; *Elder v. Elder*, 50 Me. 535; *Morton v. Southgate*, 28 Me. 41; and see other cases cited in note 8 under § 329, *ante*, in vol. 1.

Maryland. — The equitable jurisdiction in this state is equally broad as and quite similar to that in Kentucky and several other commonwealths. Notwithstanding the statutory probate system, it is perfectly well settled that the original jurisdiction of equity in administrations remains, and will be exercised in calling executors and administrators to account, in superintending the administration of assets, and in making final settlement and distribution of the estate among legatees, distributees, and the like; *Davis v. Clabaugh*, 30 Md. 508; *Barnes v. Compton's Adm'rs*, 8 Gill, 391; as an illustration, a suit in equity by the representatives of a ward against the executors of a deceased guardian, who had died before an accounting and final settlement of the ward's estate, was held to be clearly maintainable: *Barnes v. Compton's Adm'rs*, *supra*. [Where some of the parties claiming distribution are non-residents, and refuse to appear in the orphans' court, as that court has no power to issue process to bring them in, or to make publication against them, a proper case is presented for equity to administer and distribute the estate: *Alexander v. Leakin*, 72 Md. 199.] This jurisdiction, however, is only concurrent with that of the probate court, and will not be exercised, in the absence of special equitable features, where probate has already assumed jurisdiction. Equity will not ordinarily interfere with an administration begun and pending in the orphans' court. The powers of the latter tribunal are generally adequate to protect the rights of those interested in the estate: *Lee v. Price*, 12 Md. 253. [If,

for example, a personal representative apprehends a loss from the neglect or misconduct of his co-executor or co-administrator, adequate relief may be obtained in the probate court: *Beall v. Hilliary*, 1 Md. 186; 54 Am. Dec. 649; *Whiting v. Whiting's Adm'r*, 64 Md. 157.] In matters of distinctively equitable cognizance, the jurisdiction of equity is exclusive. Thus where a sale had been made under an order of the orphans' court, and this sale was afterwards vacated by a subsequent order, the orphans' court has no power to pass upon and to adjust the rights and equities of the purchaser growing out of the order of vacation; such matters belong exclusively to the jurisdiction of equity: *Eichelberger v. Hawthorne*, 33 Md. 588. [And a statute providing that the administrator *de bonis non* may be empowered by a probate court to execute the powers of sale of realty conferred by the will upon the executor has not affected the general superintending power exercised by the court of chancery over trusts; such administrator *de bonis non* may therefore administer the estate and execute the power of sale under the direction and protection of a court of equity: *Keplinger v. Maccubbin*, 58 Md. 206.]

Massachusetts. — It is not enough to say that the equitable jurisdiction in this state is narrow; the only conclusion to be drawn from decisions heretofore made is, that there is no equitable jurisdiction whatever in matters belonging properly to the administration and settlement and distribution of estates. The statutory powers given to courts of equity in cases of trust, fraud, discovery, and the like, are held not to be any grounds for interposition in administrations. Not only will a court of equity not interfere with a pending administration in the probate court, but it will not entertain a suit to correct or invalidate a settlement made by the probate court on the ground of fraud or mistake, or because a discovery is needed, etc. These conclusions are sustained by the entire course of decisions: *Jennison v. Hapgood*, 7 Pick. 1; 19 Am. Dec. 258; *Grinnell v. Bax-*

do not come within the scope of the probate jurisdiction. These states are Connecticut, Indiana, Maine,

ter, 17 Pick. 383; *Sever v. Russell*, 4 Cush. 513; 50 Am. Dec. 811; *Wilson v. Leishman*, 12 Met. 316; *Hathaway v. Thayer*, 8 Allen, 421; *Southwick v. Morrell*, 121 Mass. 520; *Sykes v. Meacham*, 103 Mass. 285; see *ante*, vol. 1, § 320, note 1, for a quotation from the opinion in *Wilson v. Leishman*, which expresses the theory maintained by the court; [*Muldoon v. Muldoon*, 133 Mass. 114.] This doctrine is carried to such an extent as to deny the jurisdiction of equity to interfere with a settlement made in the probate court by an executor, which was impeached on the ground of his fraud and misconduct, although his account was rendered and the settlement made without notice to the parties interested: *Sever v. Russell*, *supra*. Matters which are collateral to or incidentally affect an administration may sometimes come within the equitable jurisdiction; for example, where A claims the rights of a child and heir of the intestate under an agreement made between the intestate and A's father, and also under an adoption in pursuance of a statute and judicial decree in Pennsylvania, the question of his rights to the estate under the agreement may be determined in equity, but not until his *status* as a child of the intestate has been settled in the probate court: *Ross v. Ross*, 123 Mass. 212. [And as trustees may ask instructions, not only as to the construction of the will, but as to their duties under it, so executors may properly ask instructions as to their duties under the will, in advance of the final settlement of their account, when grave embarrassments may result from delay, the probate court having no power to give directions as to how future accounts shall be rendered or the duties of executors performed: *Welch v. Adams*, 152 Mass. 74, 81.] Another instance is that of creditors who may resort to equity for aid when their legal remedies have been exhausted, and thus a creditor may maintain a suit in equity against the executor and devisees whose devises are subject to debts, when the statutory period of limitation has elapsed: *Fairfield v. Fairfield*, 15 Gray, 596. [A creditor

of the deceased cannot maintain a bill to reach land fraudulently conveyed by the deceased in his lifetime. The proper person to bring such suit is the personal representative: *Putney v. Fletcher*, 148 Mass. 247.]

Michigan. — The equitable jurisdiction over the subject-matter in this state is of the narrowest extent. This state is to be ranged in the same class with Maine and Massachusetts. The rule is settled that the jurisdiction over everything pertaining to administration belongs exclusively to the probate courts. Equity has no jurisdiction to interfere with anything directly belonging to the course of administration, accounting, settlement, or distribution. Even frauds, mistakes, abuse of his trust, and the like acts of an administrator or executor must be dealt with by the probate court. Whatever equitable jurisdiction relating to the estates of decedents exists is confined to matters of purely equitable cognizance, and *auxiliary or ancillary to the administration* and remedies granted by probate tribunals: *Holbrook v. Campau*, 22 Mich. 288; *Dickinson v. Seaver*, 44 Mich. 624; *Winegar v. Newland*, 44 Mich. 367; *Kellogg v. Aldrich*, 39 Mich. 576; *Shelden v. Walbridge*, 44 Mich. 251; [*Aldrich v. Annin*, 54 Mich. 230.] As illustrations of cases which do not furnish sufficient grounds for the interference of equity: A suit by a sister of an intestate entitled to a distributive share of his estate, alleging fraud in the appointment of a guardian and administrator, and asking that he may be removed and a receiver appointed, was held not maintainable; the relief must be obtained from the probate court: *Kellogg v. Aldrich*, *supra*; and when a father had obtained allowance of a claim upon his son's estate, but the son's widow, who was the executrix, refused to pay it, and conveyed away property out of which it should be satisfied, the remedy was not in equity, but in probate: *Winegar v. Newland*, *supra*. In the following case equity exercised jurisdiction: A suit brought by an administrator against the grantee to set aside a deed of conveyance made by an heir of the de-

Massachusetts, Michigan, Nebraska, Nevada, New Hampshire, Oregon, and Pennsylvania. In the states of the

ceased intestate was dismissed on the facts; but an injunction was allowed to the grantee to restrain the administrator and heir from selling the real estate, since it appeared that the personal property was sufficient to pay all debts and claims against the estate: *Hill v. Mitchell*, 40 Mich. 389. [A court of equity has jurisdiction to restrain a sale of lands by the executor to pay debts and legacies in any other order than that prescribed by statute; and jurisdiction having been assumed, the court may go on and declare for what specific purpose a sale may be ordered: *Ireland v. Miller*, 71 Mich. 119.]

Mississippi. — In describing the equitable jurisdiction of this state, it is necessary to keep two statutory systems perfectly distinct, the former and the present. By the act of May 4, 1870, a sweeping change was made in the judicial powers and organization. The entire powers and functions of the probate courts were transferred to the courts of chancery, so that courts of equity were clothed with a complete and exclusive jurisdiction over all testamentary matters, matters of probate, and of the administration, accounting, settlement, and distribution of estates of decedents, and of all questions and reliefs incidental, collateral, or auxiliary to regular administrations. Still, the decisions under this statute held that the two jurisdictions were not amalgamated and made one, and that the proper jurisdiction of equity was not enlarged, but that the same court simply held and exercised all the powers of the probate court, and all those of a court of chancery, in the same manner as a court may at once be a court of law and of equity. Under the present constitution, however, and the Code of 1871, sec. 976, it seems that the two jurisdictions have been somewhat amalgamated, and that the equity jurisdiction has been enlarged. In the language of a recent case, the design of this last legislation was to restore the chancery jurisdiction to its original dimensions: See *ante*, vol. 1, § 350, note 1: *Wells v. Smith*, 44 Miss. 296; *Bernheimer v. Calhoun*, 44

Miss. 426; *Saxon v. Ames*, 47 Miss. 565; *Troup v. Rice*, 49 Miss. 248; *Smith v. Everett*, 50 Miss. 575. The following cases are decided under the last statute: *Walker v. State*, 53 Miss. 532; *Bank of Miss. v. Duncan*, 52 Miss. 740; *Brunini v. Pera*, 54 Miss. 649; *Evans v. Robertson*, 54 Miss. 683; *Buie v. Pollock*, 55 Miss. 309; *Clopton v. Haughton*, 57 Miss. 787; *Hunt v. Potter*, 58 Miss. 96. As examples of the present system: A suit in equity may be maintained against the executor or administrator, and *his sureties*; legatees, distributees, and creditors are enabled to bring executors or administrators into chancery for investigation and adjudication of questions relating to the execution of their trusts, and their sureties can also be made parties: *Buie v. Pollock*, *supra*; judgment creditors of an estate may maintain a suit in equity against an executor to compel a final settlement and payment, and for a *personal decree* against him if he has committed a *devastavit*; and if the executor dies, the suit should be revived against his representatives: *Clopton v. Haughton*, *supra*; an administrator of an attorney may maintain a suit in equity against the executor of a deceased client to recover the amount justly due for professional services: *Hunt v. Potter*, *supra*. *The former system*: Although the former system has been superseded, it is necessary to give a brief abstract of the decisions under it, in order to show what cases are still authoritative, and what have been rendered obsolete and nugatory. The general doctrine was settled that with respect to all matters directly and properly belonging to the administration and settlement of estates, the jurisdiction of the probate courts was exclusive; equity had no jurisdiction: *Gildart's Heirs v. Starke*, 1 How. 450; *Blanton v. King*, 2 How. 856; *Edmundson v. Roberts*, 2 How. 822; *Charmichael v. Browder*, 3 How. 252; *McRea v. Walker*, 4 How. 455; *Hamberlin v. Terry*, 7 How. 143 (has no jurisdiction of a suit to set aside a probate of a will on the ground of testator's insanity or of fraud in the probate); *Farve's Heirs v. Graves*, 4 Smedes & M.

third class, the equitable jurisdiction is not concurrent, but is simply auxiliary or ancillary and corrective.

707; *Gaines v. Smiley*, 7 Smedes & M. 53; 45 Am. Dec. 295; *Ragland v. Green*, 14 Smedes & M. 194; *Neylans v. Burge*, 14 Smedes & M. 201; *Hill v. McLaurin*, 28 Miss. 288; *Ratliff v. Davis*, 38 Miss. 107; *Hart v. Hart*, 39 Miss. 221; 77 Am. Dec. 668; *Capers v. McCaa*, 41 Miss. 479; *Gilliam v. Chancellor*, 43 Miss. 437; 5 Am. Rep. 498. Notwithstanding this general rule, there were certain classes of cases in which it was settled that equity had jurisdiction under the former system. These cases are still useful under the present system, for they illustrate what controversies, rights, and remedies connected with administration are proper subject-matter of equitable cognizance in general. These cases may be arranged in three principal classes: 1. In matters which are incidental and collateral to the regular course of administration, where the question is one peculiarly of equitable cognizance, and the probate courts could not give adequate relief: *Carmichael v. Browder*, 3 How. 252; as where an heir sought the specific delivery up of a family negro slave: *McRea v. Walker*, 4 How. 455. Where there was fraud in an executor's settlement, a court of equity might set it aside, and order a new settlement in the probate court: *Neylans v. Burge*, 14 Smedes & M. 201; *Green v. Creighton*, 10 Smedes & M. 159; 48 Am. Dec. 742; *Searles v. Scott*, 14 Smedes & M. 94; but a suit in equity to set aside a fraudulent sale by an administrator could not be maintained: *Hart v. Hart*, 39 Miss. 221; 77 Am. Dec. 668. A suit in equity was proper to set aside and cancel a title, so that the property held under it could be regularly administered upon and distributed: *Hill v. McLaurin*, 28 Miss. 288. A sale of land ordered by a probate court to pay a debt barred by the statute of limitations might be enjoined in equity, at the suit of a party who had no opportunity to contest the proceedings in the probate court: *Moody v. Harper*, 38 Miss. 599. And where a widow claimed under an antenuptial agreement, and also under her husband's will, a suit could be maintained

to determine whether she was entitled to both, or whether she was put to her election; and the court of equity, having acquired jurisdiction, may restrain proceedings in the probate court, and grant full and final relief: *Gilliam v. Chancellor*, 43 Miss. 437; 5 Am. Rep. 498. 2. A second class included cases where there was no administration at all pending in the probate court. It was at first held that where no letters testamentary or of administration had been issued, so that no administration at all had been commenced, a court of equity might assume jurisdiction in the first instance of the administration by suit, and might thus decree a final settlement and distribution. This rule was then extended to the cases where an administration in the probate court had been entirely ended, the estate settled and distributed; a party who had not been included in this final settlement might resort to equity for a further independent accounting and settlement: *Faroe's Heirs v. Graves*, 4 Smedes & M. 707; *Rabb v. Griffin*, 26 Miss. 579; *Archer v. Jones*, 26 Miss. 583; *Wood v. Ford*, 29 Miss. 57; *Manly v. Kidd*, 33 Miss. 141; *Hill v. Boyland*, 40 Miss. 618. 3. Finally, there were some cases in which equity had an exclusive jurisdiction, because a court of probate was not competent to give the relief to which the plaintiff was entitled: Suit by administrator of a deceased partner against a surviving partner for an account and settlement: *Scott v. Searles*, 5 Smedes & M. 25; 7 Smedes & M. 498; 45 Am. Dec. 317 (suit to restrain interference with assets); *American etc. Soc. v. Wade*, 8 Smedes & M. 610 (appointment of a receiver over certain property).

Missouri.—There is some direct conflict among the decisions; and the court has, at different times, adopted different views with respect to the extent of the equitable jurisdiction. The plain tendency of the most recent cases is to restrict that jurisdiction within very narrow limits. The present system seems to be, that the probate court has absolutely exclusive jurisdiction over admission of wills to

The probate court takes cognizance originally of all administrations, and has powers sufficient for all ordinary

probate, granting and revoking letters testamentary, and an *original* jurisdiction, generally exclusive, over all matters pertaining to the administration itself, the accounting of executors and administrators, the appropriation of assets in payment of debts, the final settlement and distribution of estates. Equity has no original jurisdiction to maintain a suit in the first instance for any of these purposes; its jurisdiction is only corrective in special cases after a settlement has been made, or auxiliary, to grant equitable relief in some incidental matters belonging distinctively to the equitable cognizance, such as trusts and the like: *Butler v. Lawson*, 72 Mo. 227 (equity has exclusive jurisdiction to follow trust funds, etc., although the trustee is dead, and an administration is pending in the probate court); *Pearce v. Calhoun*, 59 Mo. 271; *Titterington v. Hooker*, 58 Mo. 593 (on failure of personal property and after final settlement, a suit in equity cannot be maintained by a creditor to reach lands descended to the heirs of the intestate. The doctrine of equitable assets, and equitable suits for marshaling assets, or for a discovery, accounting, and the like, are abrogated, except so far as they are incorporated in the statutory rules controlling the probate courts; these courts have exclusive jurisdiction of all such matters); *Chandler v. Dodson*, 52 Mo. 128 (the same); *Overton v. McFarland*, 15 Mo. 312; *Jackson v. Jackson*, 4 Mo. 210 (no jurisdiction in equity to establish a lost or destroyed will); *Graham v. O'Fallon*, 3 Mo. 507. It was at one time held that equity had an *original* jurisdiction, and could entertain a suit in the first instance for an administration: *Erwin v. Henry*, 5 Mo. 469; but this case was soon overruled, and the doctrine established that equity only had a concurrent jurisdiction over such matters as were not expressly and specifically given by the statute to the jurisdiction of the probate court. Matters incidental to the regular administration: *Miller v. Woodward*, 8 Mo. 169 (suit by a surety on a bond of the deceased for subrogation and exoneration); *Berry*

v. Robinson, 9 Mo. 273 (correcting a settlement); *Clark v. Henry's Adm'r*, 9 Mo. 336 (the same); *Jones v. Brinker*, 20 Mo. 87 (to falsify accounts and settlement). It would seem that the doctrine of these cases has been somewhat limited by the more recent decisions first quoted.

Nebraska. — The reported decisions throw no light upon the subject, except so far as the absence of an equitable jurisdiction may be inferred from the absence of cases. There is a full statutory system of probate, and the jurisdiction of the probate courts over all matters properly belonging to an administration seems to be practically exclusive. There is no jurisdiction in a court of equity to set aside a will admitted to probate: *Loosemore v. Smith*, 12 Neb. 343.

Nevada. — In this state, also, the statutory probate jurisdiction is so full and complete that there was ground for the argument that a court of equity was deprived of the power to entertain a suit for the foreclosure of a mortgage, where the mortgagor was dead, but that the power belonged wholly to the probate court to decree payment of a mortgage in the same manner as they would deal with any other claim in the course of the administration. It is held, however, that equity has jurisdiction of a suit to foreclose a mortgage against the estate of a decedent; that this jurisdiction is exclusive, where it is necessary to bring in other parties; but where the only parties are the mortgagee and the representatives of the deceased mortgagor, the equitable jurisdiction is concurrent with that of the probate court. In the latter class of cases a court of equity may, in its discretion, assume the jurisdiction, or may decline to exercise it, and may thus leave the parties to the relief given by the probate proceedings: *Corbett v. Rice*, 2 Nev. 330. In this state, the statutory probate jurisdiction and the ordinary jurisdiction in equity and law are conferred upon the same court, — the district court; but the proceedings in each branch are separate and dis-

purposes. Equity interposes only in special or extraordinary cases, which have either been wholly omitted from

tinct: *Lucich v. Medin*, 3 Nev. 93; 93 Am. Dec. 376.

New Hampshire. — Although the general statutory equitable jurisdiction in this state has always been exercised more liberally and broadly than in Massachusetts and Maine, still it is settled, as in those states, that the various heads of jurisdiction — “trusts,” “accounting,” “discovery,” and the like — do not include nor give a jurisdiction to entertain administration suits, or suits for accounting, settlement, and distribution of decedents’ estates; all matters properly pertaining to administration belong exclusively to the probate courts: *Walker v. Cheever*, 35 N. H. 339, 349. Where a trust, however, is created by a will, the probate court has no power to compel the trustee to carry out the trust, nor to decide upon the rights of the *cestui que trustent*, nor the duties of the trustee; all matters relating to the due execution of the trust belong to the exclusive jurisdiction of equity: *Hayes v. Hayes*, 48 N. H. 219; *Wells v. Pierce*, 27 N. H. 503; *Wheeler v. Perry*, 18 N. H. 367; *Petition of Baptist Church*, 51 N. H. 424; *Methodist Epis. Soc. v. Heirs of Harriman*, 54 N. H. 444; and see *ante*, vol. 1, § 305. [An administrator can maintain a bill in equity for the discovery of assets and the recovery of property conveyed by the deceased in fraud of his creditors, so far as it is needed to pay the debts of the deceased: *Preston v. Cole*, 64 N. H. 460.]

New Jersey. — The equitable jurisdiction in this state is theoretically broad, and practically it is exercised constantly and freely. It is the settled doctrine that the court of chancery possesses a concurrent jurisdiction with the probate court over administrations, over accounting by executors and administrators, the settlement and distribution of decedents’ estates, and over all matters incident thereto, to the same extent as that possessed by the English court of chancery. This jurisdiction may always be exercised in the first instance — that is, before any proceedings for a settlement are begun in the orphans’ court — at the suit of legatees, distributees, or

creditors. Even after such proceedings have been begun in the orphans’ court, the equity jurisdiction is not thereby defeated; while they are pending in the probate court, the court of chancery may assume jurisdiction, and draw the final accounting and settlement to itself. Still, while the power to interfere in this manner with an administration already pending in the orphans’ court undoubtedly exists, the court of chancery will not, as a general rule, exercise the power, unless there is some substantial reason for invoking the aid of equity. If there be such good reason, — if there are special facts rendering the relief given by the orphans’ court inadequate, — the equitable jurisdiction will then be exercised as a matter of course. The most recent decisions show a decided tendency to a more stringent construction of this rule; they require a plain case of inadequacy in the remedies of the probate court, or that the reasons for interference should be plain and convincing, before the equitable jurisdiction can be invoked, where the proceedings for a settlement have already been begun in the orphans’ court: See *ante*, vol. 1, § 350, note 1; *Salter v. Williamson*, 2 N. J. Eq. 480; 35 Am. Dec. 513; *King v. Executors of Berry*, 3 N. J. Eq. 44, 261; *Smith v. Executor of Moore*, 4 N. J. Eq. 485; *Meeker v. Marsh*, 1 N. J. Eq. 198; *Van Mater v. Sickler*, 9 N. J. Eq. 453; *Clarke v. Johnston*, 10 N. J. Eq. 287; *Mallory’s Adm’r v. Craig*, 15 N. J. Eq. 73; *Frey v. Demarest*, 16 N. J. Eq. 236; *Search’s Adm’r v. Search’s Adm’rs*, 27 N. J. Eq. 137; *Decker v. Decker’s Adm’x*, 27 N. J. Eq. 239 (suit by a creditor for a final settlement dismissed, on the ground that no sufficient reason appeared for not proceeding with the settlement in the probate court.) Side by side with this general doctrine is the rule that where a party seeks relief on grounds of peculiarly equitable cognizance, and which is itself purely equitable, the jurisdiction of chancery is not simply concurrent, but paramount to that of probate. For example, a suit, not only for an account, but to compel executors to give security, to restrain

the statutory grant of probate jurisdiction, or for which its methods and reliefs are imperfect and inadequate,

them from calling in and receiving portions of the estate, and to have a receiver appointed if necessary, belongs solely to the equity jurisdiction: *King v. Executors of Berry*, 2 N. J. Eq. 44, 261. Where an administrator retains funds of the estate in his own hands mingled with his own, a party interested may maintain a suit for a discovery and accounting: *Frey v. Demarest*, 16 N. J. Eq. 236. Where for any special purpose — such as the construction of a will — the court of chancery assumes jurisdiction, it may, and generally will, retain the case so as to decree a final settlement and distribution: *Mallory's Adm'r v. Craig*, 14 N. J. Eq. 73; *Youmans v. Youmans*, 26 N. J. Eq. 149; [*Coddington v. Bispham*, 36 N. J. Eq. 578.] Finally, a suit in equity may be maintained to look behind, impeach, and correct a final settlement in the probate court on the ground of fraud or of mistake: *Frey v. Demarest*, *supra*. Where a sale had been made under a decree in a mortgage foreclosure suit of land belonging to an intestate, and the administrator, who was a party, on being requested by creditors, refused to apply to have the sale set aside, held, that a creditor, on behalf of himself and other creditors, might apply, on petition in the suit, and obtain the relief: *Van Dyke v. Van Dyke*, 31 N. J. Eq. 176.

New York. — The system in New York is so fully described in the first volume that very little needs to be added here: See *ante*, vol. 1, § 349, note 1, extract from the opinion in *Chipman v. Montgomery*. Although the equitable jurisdiction is not expressly abrogated by anything in the statutes, yet it is *displaced* in all ordinary cases by the probate system; the surrogate's court is the only appropriate tribunal for the control of administrations under all ordinary circumstances. The equitable jurisdiction will not be exercised except for some very special and substantial reasons, — in some extraordinary circumstances which render the action of the surrogate's court and its remedies imperfect and inadequate. In the apt language of the court in the case of

Chipman v. Montgomery, the equitable jurisdiction is rather auxiliary than concurrent. Thus a court of equity may maintain a suit to construe a will, to enforce a trust created by a will, and undoubtedly to set aside a decree of the surrogate's court on the ground of fraud, and to grant relief in particular instances not included within the statutory powers conferred upon the probate tribunal: *Seymour v. Seymour*, 4 Johns. Ch. 409; *Thompson v. Brown*, 4 Johns. Ch. 619; *Whitney v. Monro*, 4 Edw. Ch. 5; *Rogers v. King*, 8 Paige, 210; *Christy v. Libby*, 35 How. Pr. 119; *Chipman v. Montgomery*, 63 N. Y. 221, 235, 236. In *Rogers v. King*, and especially in *Christy v. Libby*, *supra*, the equitable jurisdiction is described in a somewhat broader manner than is admissible since the decision in *Chipman v. Montgomery*. See also *Peyser v. Wendt*, 87 N. Y. 322; *Haddow v. Lundy*, 59 N. Y. 320, in which the jurisdiction was exercised without question. As illustrations of special circumstances and peculiar reliefs for which the equitable jurisdiction may be properly exercised: Under the old system of courts and procedure a bill for a discovery of assets was proper, but under the existing procedure no suit for a discovery is permitted: *Thompson v. Brown*, 4 Johns. Ch. 619; where a suit for a construction of a will is proper, the court may determine the validity of any of its provisions, so far as it concerns the plaintiff's interest in the property, and may render a decree in his favor for such portions of the property as he is entitled to receive: *Bowers v. Smith*, 10 Paige, 193; and the probate of a will obtained through fraud may be set aside by a suit in equity: *De Bus-sierre v. Holladay*, 55 How. Pr. 210; it seems that a suit may be maintained by an administrator to enjoin the surrogate from disregarding, in a final settlement, certain sealed instruments executed by next of kin releasing him from liability for their distributive shares; but a complaint which did not allege that these releases were valid was fatally defective: *Wright v. Fleming*, 76 N. Y. 517. [In the re-

or where its proceedings have miscarried and require correction. This class includes Arkansas, California,

cent case of *Sanders v. Soutter*, 126 N. Y. 193, it was held that a surrogate's court has no power to annul or set aside, on the ground of fraud, a release executed by parties interested in an estate to the executors thereof; that such relief may and can only be obtained from a court of equity; and that in an action brought for such purpose the court, in the exercise of its concurrent jurisdiction with the surrogate's court, may grant full relief, and decree an accounting by executors, a settlement and distribution of the estate.]

North Carolina. — The equitable jurisdiction in this state is full and active, substantially the same as in Alabama, — more freely exercised than in New Jersey. Although there seems to be some discrepancy in the judicial *dicta*, the doctrine is settled by the most recent decisions that the jurisdiction of equity over administrations, the calling of executors and administrators to account, the final settlement and distribution of estates, and all matters properly belonging thereto, is concurrent with that of the probate court. If proceedings for a settlement have been begun in either court, such court has, in general, the paramount authority to go on and conclude the settlement. A suit for an accounting and settlement may be brought in the first instance in a court of equity; and if so, it will enjoin any proceedings which may afterwards be instituted in the probate court: *Pegram v. Armstrong*, 82 N. C. 326; *Haywood v. Haywood*, 79 N. C. 42; *Finger v. Finger*, 64 N. C. 183 (the court may in such a suit enjoin a sale of land for payment of debts under an order made by the probate court); the case of *Hunt v. Sneed*, 64 N. C. 176, seems to be conflicting, and it is difficult to reconcile some of its *dicta* with the foregoing decisions. A suit by a legatee against an executrix who was alleged to be wasting the property was dismissed on the ground that the probate court has original jurisdiction over all proceedings for the settlement of decedents' estates, which is exclusive when adequate. The only mode of reconciliation is to regard this

latter proposition as only intended to be applicable to cases where the probate jurisdiction has already attached by reason of proceedings for a final settlement having been begun therein. The following are some special instances of the equitable jurisdiction: A legatee or distributee may maintain a suit for an accounting against the personal representatives of a deceased executor or administrator who died before a final settlement, although there is a surviving co-executor, or an administrator *de bonis non* has been appointed: *Brotten v. Bateman*, 2 Dev. Eq. 115; 22 Am. Dec. 732; *Thompson v. McDonald*, 2 Dev. & B. Eq. 463; in a suit to declare the trusts of a will, and to determine the liability of lands devised subject to the payment of legacies, the court has jurisdiction to retain the cause, and decree the application of the personalty, and that failing, to apply the lands in payment of the legacies: *Devereux v. Devereux*, 81 N. C. 12; a court of equity has exclusive jurisdiction where a creditor brings a suit against an administrator, alleging that the intestate bought certain land, and for the purpose of defrauding his creditors, he being insolvent, procured the land to be conveyed to his son, who became, and is, the administrator, and praying that the administrator be declared a trustee, and that the land be sold to satisfy the debts of the intestate. Such a case has no resemblance to the ordinary sale of real estate of a deceased person for the purpose of paying his debts, and the probate court has no jurisdiction over it: *Greer v. Cagle*, 84 N. C. 385. An administrator cannot apply to a court of equity for instructions as to the distribution, where the alleged titles of the claimants are wholly legal: *Ferrand v. Howard*, 3 Ired. Eq. 381. It seems that a single creditor cannot sue in equity for a payment of his own debt, and a discovery of assets: *Wilkins v. Finch*, Phill. Eq. 355; and see *Wadsworth v. Davis*, 63 N. C. 251.

Ohio. — Under the existing statutory system, the jurisdiction of the probate court over administrations, accounting of executors and adminis-

Georgia, Kansas, Missouri, New York, Ohio, South Carolina, Tennessee, Texas, Vermont, and Wisconsin.

trators, settlement and distribution of estates, is generally exclusive. The jurisdiction of equity is entirely auxiliary, and can be exercised only when the remedies conferred by the probate court would be imperfect or inadequate: *Piatt v. Longworth's Devises*, 27 Ohio St. 159, 186; see *ante*, § 349, note 1; *McDonald v. Aten*, 1 Ohio St. 293; *Taylor v. Huber's Ex'rs*, 13 Ohio St. 288; as examples, a creditor may maintain a suit to reach assets and place them in the administrator's hands, but that being accomplished, the distribution of such assets will go on under direction of the probate court: *McDonald v. Aten*; and equity may decree payments under a trust to be made without a pending administration: *Taylor v. Huber's Ex'rs*. Under former statutes, the equitable jurisdiction was much more extensive, and seems to have been concurrent in all matters of administration with that of the probate court: *Cram v. Green*, 6 Ohio, 429; *Stiver v. Heirs of Stiver*, 8 Ohio, 217.

Oregon. — The absence of decisions upon the general question indicates that the statutory system of probate jurisdiction is exclusive, and that there is practically no equity jurisdiction. The very few cases upon incidental subjects show that matters and reliefs connected with an administration, which are ordinarily of a purely equitable cognizance, and which in most other states, even where there was a full probate jurisdiction, would confessedly belong to the equitable jurisdiction, are embraced within this statutory probate system, and are taken away from the courts of equity. Thus it is held that the probate court has exclusive jurisdiction in all matters pertaining to the transfer of title to the personal property of decedents. Even where there was an antenuptial agreement made by the deceased, the rights of the parties claiming under it cannot be determined in equity; it should be presented and proved in the regular course of the administration pending in the probate court, and all rights arising out of it determined by that court in the final settlement: *Winkle*

v. Winkle, 8 Or. 193. A creditor whose demand has been rejected by the administrator, and who has failed to bring an action against the administrator for the purpose of establishing it, cannot, after the final settlement, maintain a suit in equity against the next of kin to compel payment out of their distributive shares: *Grange Union v. Burkhart*, 8 Or. 51.

Pennsylvania. — This state, like Massachusetts and Maine, belongs to the class in which the statutory probate jurisdiction is exclusive in all matters pertaining to ordinary administrations. Equity has jurisdiction only of matters and reliefs incidental to the regular course of administration which are distinctively of equitable cognizance, and for which the methods and remedies of the probate court are imperfect or inadequate. In other words, equity cannot interfere in the settlement of decedents' estates, except upon some extraordinary and substantial ground: *Campbell's Appeal*, 80 Pa. St. 298; *Dundas's Appeal*, 73 Pa. St. 474, 479; *Linsinbigler v. Gourley*, 56 Pa. St. 166, 172; 94 Am. Dec. 51; *Whiteside v. Whiteside*, 20 Pa. St. 473, per Black, C. J.; [*York's Appeal*, 110 Pa. St. 69.] See *ante*, vol. 1, § 348, note 1. As recent illustrations of such special grounds for invoking the aid of equity: Although the statute gives the orphans' court jurisdiction to decree the specific performance of decedents' contracts for the purchase and sale of land, that court has no power to take cognizance of partnership matters, and to compel an accounting between the personal representatives of a deceased partner and the survivors, or where a full and final settlement of partnership affairs and the specific performance of firm agreements are necessarily involved in the carrying out of decedents' contracts; all such matters still belong to the exclusive jurisdiction of equity: *Wiley's Executors' Appeal*, 84 Pa. St. 270; while equity has jurisdiction of a suit to declare the trusts of a will void, it will not exercise the jurisdiction where the party seeking the relief has no interest nor title in the land, nor

Among the particular instances in which it has been held by courts of states composing the third class, that

where the relief is only a nominal part of the entire relief sought for by the suit, and the main questions involved therein are within the exclusive jurisdiction of the orphans' court: *Norris v. Farrell*, 33 Leg. Int. 129; 2 Week. Not. Cas. 423. [In the case of a legacy charged upon real estate, the jurisdiction of the orphans' court is exclusive: *Brotzman's Appeal*, 119 Pa. St. 645.] The equitable jurisdiction clearly extends to trusts created by will.

Rhode Island. — It seems that the supreme court, as a court of equity, has a concurrent original jurisdiction with the probate court over administrations, and according to the settled doctrine in such case, where one court has first assumed jurisdiction of a case, the other will not interfere. Held, therefore, that where there had been an accounting by an administrator, and a final decree thereon in the probate court, a suit in equity to review the accounting would not be maintained, even though it charged that a release obtained by the administrator from the next of kin was fraudulent, and sought to have the same declared void, since full relief could be granted by means of an appeal from the final decree of the probate court: *Blake v. Butler*, 10 R. I. 133. See *ante*, vol. 1, § 349, note 1. See also the following cases in the United States circuit court, which arose in this state: *Mallett v. Dexter*, 1 Curt. 178; *Pratt v. Northam*, 5 Mason, 95.

South Carolina. — It seems that the equitable jurisdiction in this state is restricted to those special circumstances and extraordinary reliefs which do not fall at all within the scope of the probate cognizance, or for which its remedies are wholly inadequate. In ordinary and regular administrations, the jurisdiction of the probate court seems to be exclusive. A court of equity may interfere with a pending administration where an executor has committed a *devastavit*, or is insolvent and wasting the assets: *Ragsdale v. Holmes*, 1 S. C. 91. [When a legatee has been overpaid, and the executor is insol-

vent and refuses to sue, the other legatees may proceed in equity against the overpaid legatee without first exhausting their remedies against the executor: *Miller v. Stark*, 29 S. C. 325. An administrator *de bonis non* may sue in equity to set aside a fraudulent deed executed by one who was a debtor by note and judgment to the first administrator, as such: *Shell v. Boyd*, 32 S. C. 359.] But a court of equity cannot order a sale of real estate to pay debts where the personal property is insufficient: *Eno v. Calder*, 14 Rich. Eq. 154; and cannot remove an executor or administrator: *Campbell v. Bank of Charleston*, 3 S. C. 384.

Tennessee. — There is a very unusual power conferred by statute upon the court of chancery in this state. If six months have elapsed after the death of the intestate, and no one will apply or can be procured to apply to the probate court for appointment as administrator, and for the issue of letters of administration, then a suit may be maintained in equity by a creditor or next of kin, but not by the widow of the decedent, for the appointment of an administrator. In such a case the court of chancery has jurisdiction to appoint an administrator, and, it seems, to go on and control the entire administration thus begun, to compel an accounting, and to decree a final settlement and distribution. The operation of the statute is confined to the exceptional circumstances as described. It does not confer upon the courts of equity any concurrent jurisdiction with the probate courts over administrations generally. In all other cases, the equitable jurisdiction is limited to such extraordinary matters and reliefs as do not come within the scope of the powers conferred on the courts of probate: *Evans v. Evans*, 2 Cold. 143; *Bruce v. Bruce*, 11 Heisk. 760; *Ran-kin v. Anderson*, 8 Baxt. 240. A court of equity has no jurisdiction whatever in the matter of admitting wills to probate: *Townsend v. Townsend*, 4 Cold. 70; 94 Am. Dec. 185.

Texas. — The earlier decisions recognize an original jurisdiction of the

equity has jurisdiction of matters belonging to administrations, the following are some of the most important,

equity courts concurrent with that of probate, over administrations, the accounting of executors and administrators, the settlement of estates, and the like, with power to remove an executor and to appoint a receiver. This jurisdiction would especially be exercised in cases of trust, delay, fraud, fraudulent combination between an administrator and others, and similar circumstances of ordinary equitable cognizance: *Long v. Wortham*, 4 Tex. 381; *Dobbin v. Bryan*, 5 Tex. 276 (fraud of an administrator); *Newson v. Chrisman*, 9 Tex. 113; *Smith v. Smith*, 11 Tex. 102 (delay, fraud, or trust; suit by an heir); *Crain v. Crain*, 17 Tex. 80 (fraudulent combination by an executor or administrator with third persons); [see also *Love v. Keowne*, 58 Tex. 191.] By the later decisions, however, this equitable jurisdiction is much restricted, and is confined to cases in which the probate courts are unable to grant full and adequate relief. In all cases where the probate court can give such relief, its jurisdiction is practically exclusive, and a court of equity cannot, or at least will not, interfere. As illustrations: Where questions of title are involved depending upon the construction of a will, a court of equity is the more appropriate tribunal: *Little v. Birdwell*, 21 Tex. 597; 73 Am. Dec. 242. In an action brought by an executor on notes given for the price of land belonging to the estate sold by the executor, the defendants filed a cross-bill alleging a debt in their favor against the estate larger than the amount of the notes in suit, that it constituted a lien on the land which had priority over other claims, that the other debts of the estate were small and owed to a very few persons, and praying that all the parties interested might be brought in as defendants to the cross-bill, and the estate finally settled and distributed in that suit; held, that the court, as a court of equity, should not entertain jurisdiction, but that the probate court was fully competent to determine all the questions thus raised, and to adjudicate upon all the rights of all the parties: *Atchison v. Smith*,

25 Tex. 228. A court of probate has full power to enforce the lien of a mortgage upon the real estate of a deceased person as a step in the regular course of administration, and a court of equity will not entertain a suit for the foreclosure of such a mortgage, unless there are some special and substantial grounds for its interference; resort to a court of equity in matters connected with the administration of estates is discouraged where the powers of the probate court are adequate: *Cannon v. McDaniel*, 46 Tex. 303. Although the jurisdiction of equity in Texas is the same as that held by the English court of chancery, yet there is no power, as a part of this original jurisdiction, to order the sale of lands of a deceased for the payment of his debts, while an administration on his estate is pending in the probate court: *Rogers v. Kennard*, 54 Tex. 30. On the other hand, where no administrator had been appointed, and there was only one debt against the estate, and the heirs voluntarily settled and distributed the estate among themselves by agreement without paying this debt, the creditor, it was held, could maintain an equitable suit to compel payment of the debt, and to enforce the lien which it created on lands of the deceased, against all the heirs as defendants, without instituting proceedings for an administration in the probate court: *Patterson v. Allen*, 50 Tex. 23. [Courts of equity have the power to cancel a conveyance made by an executor in violation of an order of the probate court confirming a sale of land, when necessary for the protection of devisees, heirs, or creditors; and this power they have notwithstanding a similar power may exist in the probate court: *Fisher v. Wood*, 65 Tex. 199.]

Vermont. — The jurisdiction of the probate court is complete, sufficient, and practically exclusive in all matters belonging to the regular, ordinary course of, an administration, and the equitable jurisdiction is purely ancillary and auxiliary. The doctrine here prevailing is identical with that adopted by the New York courts.

although it must not be understood that such cases have arisen and such decisions been made in all of these states.

The proper place to have the accounts of executors, administrators, and trustees *appointed by the probate court* settled is in the probate court; the jurisdiction of chancery is only in aid of the probate court: *Merriam v. Hemmenway*, 26 Vt. 565. In one leading case, this view is set forth so clearly, and the opinion is so admirable a statement of the doctrine adopted in all the other states which belong to the same class with Vermont and New York, that I shall quote from it at some length. "Where courts of chancery have interfered in the settlement of estates, it has been merely in aid of the powers of the court of probate, and where, from defect of adequate means, it was not in its power to do the same justice as a court of equity. As a general rule, chancery retains its *ancillary* jurisdiction to the same extent over probate matters which it has over those in common-law courts. Unreasonable delay in probate courts in proceeding with the settlement, the fact that some of the parties affected by a decree were infants without guardians, or the fact that an administrator rendering his accounts will not produce books and papers, and is not compelled to do so, do not constitute sufficient grounds for the interference of chancery [i. e., such matters come within the powers of the probate court to relieve, or if that court commits an error, ample relief can be obtained on appeal from its decree.] But chancery will examine and adjust claims *between an administrator and the estate* [i. e., claims which an administrator sets up in his own favor personally, independently of the regular course of administration.] Claims *against* an administrator for moneys or property coming into his hands during administration are exclusively within the probate court's jurisdiction, as is also the entire subject of advancement. Chancery will enjoin administrators from asserting title to themselves under deeds obtained by fraud, and will require an account for the land as the property of the estate. Where administrators have received money for trespasses on intestate's land, chancery, to avoid all

doubt, may take jurisdiction, so far as to cause an account to be rendered, although the matter *might* be adjusted in the probate court": *Heirs of Adams v. Adams*, 22 Vt. 50. (This decision has been cited with approval by the New York court of appeals in the recent case of *Chipman v. Montgomery*, *supra*.) Where, in the course of administration, an administrator sets up a claim on his own behalf, adverse to that of the creditors, the latter may resort to chancery to have the controversy determined; but the equitable suit is merely ancillary, and after its decision settling the rights of the parties, the case is remitted to the probate court for final settlement and distribution: *Morse v. Slason*, 13 Vt. 296. [Though a court of equity has no jurisdiction to establish or set aside a will, these matters being within the exclusive jurisdiction of the probate court, yet, when a will which charged a legacy upon certain land has fraudulently been procured to be disallowed by the probate court, a court of equity may take jurisdiction, on the ground of the fraud, to charge the legacy upon the land: *Wetherbee v. Chase*, 57 Vt. 347. And a court of equity has ancillary jurisdiction to compel the executor to pay a legacy which the probate court has ordered to be paid: *Bellows v. Sowles*, 57 Vt. 411.]

Virginia. — So far as is indicated by the tenor of decided cases, it seems to be clear that the original jurisdiction of equity over administrations, the accounting of executors and administrators, the settlement and distribution of estates, and all matters incidental thereto, is fully preserved, concurrent with that of the probate tribunal, even if not exclusive. Any person interested in the settlement of an estate, as legatee, distributee, or creditor, may maintain a suit in equity for an administration. The system prevailing in this state appears to be substantially the same as that in Alabama. Courts of equity have jurisdiction in all cases to compel the delivery of a specific legacy by the executor: *Nelson's Adm'r v. Cornwell*, 11 Gratt. 724; and *a fortiori* the equitable jurisdiction should exist in case

If a court of equity in those states where its jurisdiction is merely auxiliary and corrective can take cognizance of

of a general legacy. A suit in the nature of a creditor's suit may be maintained by a creditor against the executor, devisees, and legatees, to compel an accounting, and no other creditor can then maintain a separate suit for his own debt, since all the creditors can come in under the decree in the original action, and the estate can thus be settled; *Kent's Adm'r v. Cloyd's Adm'r*, 30 Gratt. 555. [See also *Carter v. Hampton's Adm'rs*, 77 Va. 631.] An administrator may maintain a suit in equity against a general agent of his intestate for a discovery and an accounting of all the transactions growing out of the agency: *Simmons v. Simmons's Adm'r*, 33 Gratt. 451. A, having taken out a fire policy running from year to year, died intestate, leaving a widow and son. The widow, as administratrix, continued to pay the premiums until the loss occurred; held, that the administratrix and the heir might unite and maintain a suit in equity against the company to recover the amount due on the policy, there being a question whether this insurance money should be treated as real or as personal property: *Portsmouth Ins. Co. v. Reynolds's Adm'r*, 32 Gratt. 613.

[*West Virginia*. — The authority of the Virginia cases decided previous to the formation of the state is recognized. In the very carefully considered case of *Dower v. Seeds*, 28 W. Va. 113, 57 Am. Rep. 646, it was decided, after an elaborate review of the decisions upon the subject, that courts of probate and of equity have concurrent jurisdiction for the establishment of lost, suppressed, or destroyed wills. Where the personal estate is insufficient for the payment of the debts of the estate, a creditor may bring suit in equity for the ascertainment of debts due from the testator, for the settlement of the estate, and for the sale of the lands for the payment of debts, on the failure of the executor to institute such suit within the time limited by statute: *Broderick v. Broderick*, 28 W. Va. 378.]

[*Wisconsin*. — The system prevailing in this state, as settled by the decisions, is the same in principle, and sub-

stantially the same in practice, as that existing in New York, although the powers conferred upon the probate courts seem to be somewhat greater in number and extent than those given to the surrogates in the latter state. The probate courts have a plenary jurisdiction in all matters of administration, settlement, and distribution of estates, and much of this jurisdiction, and many of the reliefs granted in its exercise, are really equitable in their nature, and are necessarily concurrent with the jurisdiction of equity. Although the statutes have given such a broad jurisdiction to the probate courts, the original jurisdiction of equity is not abrogated; it still *exists*, dormant and suspended, but alive, ready to be invoked when necessary to do complete justice in special cases. It is well settled as the practical rule that a court of equity will not, in general, entertain or exercise jurisdiction wherever a complete, adequate, and full remedy can be obtained in the probate court: *Batchelder v. Batchelder*, 20 Wis. 452; *Tryon v. Farnsworth*, 30 Wis. 577; *Brook v. Chappell*, 34 Wis. 405. And the probate court has jurisdiction to give construction to a will, and may exercise such jurisdiction as fully as a court of equity, but the power of equity to construe wills does not seem to be thereby abrogated or abridged: *Appeal of Schæffner*, 41 Wis. 260; *Wolf v. Schæffner*, 51 Wis. 53. In an equitable suit against the executor of A, the complaint alleged that the plaintiff and A were partners in the ownership of certain mills, the title to which stood in the name of A alone, but was held by him in trust for the firm; that A sold and conveyed the mills, and received the purchase-money, and had also received large sums as rents of the mills; that A was bound to pay the plaintiff two thirds of the sum received as the price of the mills and two thirds of said rents, but the plaintiff had received nothing; the plaintiff demanded an accounting of the rents and payment by the executor of what was found due the plaintiff on such accounting, and also payment of two thirds of the sum received by A on

such special circumstances, then *a fortiori* a court of equity may do so in those states where its original jurisdiction is preserved concurrent with that of the probate tribunals. In states of the second class, however, the probate courts would furnish the only relief in all these cases.

the sale of the mills. There was no allegation of a specific lien or any real property or fund in the executor's hands, nor of any failure by the probate court to fix a time for the presenting of claims against the estate. Held, that the suit was one merely to recover money due to the plaintiff from the deceased, since no equitable lien in plaintiff's favor upon any fund nor against other creditors was alleged to exist, and that the action could not be maintained; a court of equity had no jurisdiction; that of the probate court was complete and adequate: *Lannon v. Hackett*, 49 Wis. 261. The correctness of the decision may, I think, be questioned. It denies an equitable jurisdiction which is, I believe, generally, if not universally, recognized and exercised. Even in states where the probate jurisdiction is so broad that the equitable jurisdiction is ordinarily dormant, like California and New York, it is held that an equitable action for an accounting and settlement of the partnership affairs may be maintained by the administrator of a deceased partner against the survivor, or by the survivor against the administrator of a deceased partner; the power of a court of probate over the estate of a deceased partner is not regarded as restricting the jurisdiction of equity over such actions. Among the special cases in which the equitable jurisdiction is not dormant, but may be freely exercised, are the following: To compel the performance of trusts created by a will: *Batchelder v. Batchelder*, 20 Wis. 452; and also in matters of legacies, their enforcement and payment, although a concurrent jurisdiction is held by the probate court: *Catlin v. Wheeler*, 49 Wis. 507. [An action brought by infants having an interest in the estate of a testator, seeking to set aside fraudulent sales of real estate made by the executor as trustee, is of equitable cognizance, on the ground that the action is to enforce

a trust: *Hawley v. Tesch*, 72 Wis. 299.]

District of Columbia. — The original general jurisdiction of equity over administrations and the settlement of estates seems to be preserved: *Creswell v. Kennedy*, 3 McAr. 78; *Keefe v. Malone*, 3 McAr. 236.

United States Courts. — The full original jurisdiction of the English court of chancery over administrations and matters pertaining to the settlement of estates is possessed by the United States circuit courts. Whenever these courts obtain jurisdiction of such a matter on account of the state citizenship of the parties, they will exercise the full powers and grant the full reliefs of chancery, unlimited and unaffected by any restrictive legislation of the state in which the matter arose, or in which the parties are resident. The state statutes abrogating the equitable jurisdiction of the state courts, and conferring an exclusive jurisdiction upon the probate courts, have no effect whatever upon the powers of the United States tribunals. This jurisdiction of the United States courts is, however, concurrent with that of the state tribunals; and if a state probate or other court has already assumed jurisdiction, and an administration is pending before it, the United States circuit court will not interfere, in the absence of fraud or other like ground of equitable cognizance: [*Ellis v. Davis*, 109 U. S. 485; *Arrowsmith v. Gleason*, 129 U. S. 98.] But a suit may be maintained in the circuit court to avoid a settlement obtained in a state probate court through fraud: *Pratt v. Northam*, 5 Mason, 95; *Mallett v. Dexter*, 1 Curt. 178; see *ante*, vol. 1, § 293; [*Sullivan v. Andoe*, 6 Fed. Rep. 647.] The United States courts, as courts of equity, have no jurisdiction to set aside a will, nor the probate of a will, on the ground of fraud: *Case of Broderick's Will*, 21 Wall. 504; [*Ellis v. Davis*, 109 U. S. 485.]

Where an executor or administrator has died without rendering a final account, equity has jurisdiction of a suit to compel *his* personal representatives to account at the instance of an administrator *de bonis non* or other party interested in the original estate, even, as some cases hold, where there is a surviving executor or administrator, and the decree so rendered has been held to be binding upon the sureties of the deceased executor or administrator. This particular condition of fact seems to have been omitted from the statutory jurisdiction of the probate courts in several states. When a settlement purporting to be final has been decreed in the probate court, a person interested in the estate, who was not a party to such proceeding, may maintain a suit in equity against the administrator or executor, and compel him to a full and final account, treating the former settlement as a nullity. It has been held in some of these states that a court of equity may take jurisdiction in the first instance, or even after proceedings in probate have been begun, of an administration, and may decree a final settlement and distribution, when there are peculiar circumstances of difficulty in the administration, and when such exercise of the equitable jurisdiction would prevent great delay, expense, inconvenience, and waste, and would thus conclude by one suit and decree a protracted and vexatious litigation. It cannot be said that these circumstances would be regarded as sufficient grounds for exercising the equitable jurisdiction in all the states of the third class, although they would undoubtedly be sufficient in all those of the first class. It is generally held that a court of equity has jurisdiction to set aside the decree of a probate court obtained by fraud, both in states of the first and of the third classes, but not in those of the second. A judgment creditor of the deceased may maintain a suit virtually to take the administration out of the hands of the administrator, and for a final settlement, where the intestate had, with the

connivance of the person afterwards appointed administrator, make a disposition of his property fraudulent as against his creditors, and the administrator is engaged in carrying out such fraudulent scheme. It is also generally held that equity may interfere with a pending administration when the administrator has committed a *devastavit*, or is wasting the assets, especially if he be insolvent, or is guilty of fraud in the management of his trust. Although the accounting by the administrator for property of the estate in his hands belongs to the probate court, yet equity has jurisdiction of personal claims between an administrator and the estate; that is, claims personal to himself, growing out of dealings with the deceased, which the administrator sets up adverse to creditors, distributees, and other persons interested in the estate; as, for example, claims set up under a deed to himself from the deceased, or under an agreement with the deceased, and the like. Where there has been no administration, but the heirs or next of kin have settled and divided the estate by voluntary arrangement among themselves, it seems that a creditor may maintain a suit in equity to compel a payment of his demand out of the property, without the necessity of taking out an administration;¹ and in some states it is held that equity has jurisdiction both when there has been no administrator, and when the administrator has made a final settlement and has been discharged. By virtue of the auxiliary jurisdiction of equity, a creditor may maintain a suit, somewhat in the nature of a "creditor's bill," to reach assets which justly and equitably belong to the estate, and to bring them within the power and control of the administrator, so that they may be administered upon and distributed by him. When a partner dies, although the probate court may have ample power to settle *his* estate, yet the auxiliary jurisdiction of equity still remains, and will be generally exercised in states of the first and third classes,

¹ [Cameron v. Cameron, 82 Ala. 392.]

and probably in many of the second, by means of a suit for an accounting and settlement of the partnership affairs, either brought by the representatives of the deceased partner against the survivors, or by the survivors against such representatives. In all the states of the first and third classes, and in a great majority it seems of those belonging to the second, equity retains its jurisdiction of suits for the foreclosure of mortgages upon the lands of deceased mortgagors or other deceased owners of land encumbered by mortgage; but in a very few of the states forming the second class, it appears that the mortgage must be enforced, like any other demand against the estate of the deceased mortgagor, in the regular course of administration pending before the probate court. Finally, throughout all the states, the original jurisdiction of equity over trusts remains unabridged and virtually unaffected by the jurisdiction given to probate courts. It is exercised in enforcing the performance of trusts and in controlling the conduct of trustees as well when trusts of real or of personal property are created by will as by deed. The equitable jurisdiction concerning the enforcement of testamentary trusts is universally regarded as entirely separate and distinct from the jurisdiction over administrations.

SECTION IV.

CONSTRUCTION AND ENFORCEMENT OF WILLS.

ANALYSIS.

- § 1155. Origin of the jurisdiction.
- § 1156. Extent of the jurisdiction; a branch of that over trusts.
- § 1157. The same; a broader jurisdiction in some states.
- § 1158. Suit to establish a will.

§ 1155. **Origin of This Jurisdiction.** — Since in England the court of chancery possesses and exercises a full jurisdiction over the administration and settlement of decedents' estates, whether the deceased died testate or

intestate, it has never been doubted that equity has there the power, as an incident of this jurisdiction, to construe and enforce wills of personal property. Under its general jurisdiction over trusts, a court of equity has also the power to construe and enforce wills of real as well as of personal property, so far as they create, or their dispositions involve the creation of, trusts. So far as a will of real property bequeaths purely legal estates, and the devisees therein obtain purely legal titles to the land given, the enforcement thereof belongs to the courts of law by means of the action of ejectment; the courts of law have full power to construe and interpret the instrument and to determine the rights of the devisees; there is no necessity, and therefore no power, of resorting to a court of equity, in order to obtain a construction of such wills. The same rules would be recognized as regulating the action of the courts in all of the states of this country which have preserved the original jurisdiction of equity over administrations, either as exclusive or as concurrent with that given to the courts of probate. In the great majority of the states, as has been shown, this original jurisdiction of equity over administrations has either been completely abrogated, or has been so curtailed and restricted that it exists merely as auxiliary to and corrective of the principal jurisdiction held by the probate tribunals. Throughout the American states there has necessarily arisen, as a supplement to the ordinary functions of the probate courts, and for the purpose of supplying the defects in their methods and remedies, a special jurisdiction of equity "for the construction of wills," which it is the object of the present section to describe.

§ 1156. **Extent of the Jurisdiction — A Branch of That over Trusts.** — Although there is not an entire uniformity in the decisions by courts of different states upon this particular subject, yet the doctrine which seems to be both in harmony with principle and sustained by the weight of authority is, that the special equitable jurisdic-

tion to construe wills is simply an incident of the general jurisdiction over trusts; that a court of equity will never entertain a suit brought *solely* for the purpose of interpreting the provisions of a will without any further relief, and will never exercise a power to interpret a will which only deals with and disposes of purely legal estates or interests, and which makes no attempt to create any trust relations with respect to the property donated.¹ In the language of recent and well-considered cases, "The rule is, that to put a court of equity in motion, there must be an actual litigation in respect to matters which are the proper subjects of the jurisdiction of that court as distinguished from a court of law. It is by reason of the jurisdiction of courts of chancery over trusts that courts having equitable powers, as an incident of that jurisdiction, take cognizance of and pass upon the interpretation of wills. They do not take jurisdiction of actions brought solely for the construction of instruments of that character, nor when only legal rights are in controversy. It is when the court is moved on behalf of an executor, trustee, or *cestui que trust*, and to insure a correct administration of the power conferred by a will, that jurisdiction is had to give a construction to a doubtful or disputed clause in a will. The

¹Sellers v. Sellers, 35 Ala. 235; 14 Hun, 313; Wager v. Wager, 21 Cowles v. Pollard, 51 Ala. 445; Clay Hun, 93; Powell v. Demming, 22 Hun, v. Gurley, 62 Ala. 14; Clark v. Clark, 235; Bullock v. Bullock, 2 Dev. Eq. 17 Ga. 485; Strubher v. Belsey, 79 Ill. 307; Ferrand v. Howard, 3 Ired. Eq. 307; Whitman v. Fisher, 74 Ill. 147; 381; Simmons v. Hendricks, 8 Ired. Mallory's Adm'r v. Craig, 15 N. J. Eq. 84, 85, 86; 55 Am. Dec. 439; Tay- Eq. 73; Youmans v. Youmans, 26 N. loe v. Bond, Busb. Eq. 5; Marrow v. J. Eq. 149; Benham v. Hendrickson, Marrow, Busb. Eq. 148; Devereux v. 32 N. J. Eq. 441; Bowers v. Smith, 10 Devereux, 81 N. C. 12; Houston v. Paige, 193; Emmons v. Cairns, 2 Sand. Howie, 84 N. C. 349; Rothgeb v. Ch. 369; Onderdonk v. Mott, 34 Barb. Mauck, 35 Ohio St. 503; Goddard v. 106; Woodruff v. Cook, 47 Barb. 304; Brown, 12 R. I. 31; Bussy v. McKie, Bailey v. Southwick, 6 Lans. 356; 2 McCord Eq. 23; 16 Am. Dec. 628; Bailey v. Briggs, 56 N. Y. 407; Chip- Gibbes v. Elliott, 5 Rich. Eq. 327; man v. Montgomery, 63 N. Y. 221, 230; Appeal of Schæffner, 41 Wis. 260; Dill v. Wisner, 88 N. Y. 153, 160; De- Wolf v. Schæffner, 51 Wis. 53; Rex- laney v. McCormack, 88 N. Y. 174; road v. Wells, 13 W. Va. 812; Magers Post v. Hover, 33 N. Y. 593, 602; 30 v. Edwards's Adm'r, 13 W. Va. 822; Barb. 312, 324; Walrath v. Handy, 24 [Wager v. Wager, 89 N. Y. 161; Weed How. Pr. 353; Stinde v. Ridgway, 55 v. Weed, 94 N. Y. 243; Cozart v. Lyon, 91 N. C. 282; Woodlief v. Mer- Abb. N. C. 275; Marlett v. Marlett, ritt, 96 N. C. 226.]

jurisdiction is incidental to that over trusts.”¹ Even by courts which maintain this restricted doctrine, it has been held that the jurisdiction extends to the construction of a doubtful will of personal property at the suit of the executor or of a legatee, although the instrument creates no express trusts, on account of the implied trust relation always existing between the executor and the legatees.² In accordance with this doctrine, which regards a trust express or implied as essential to the jurisdiction, it necessarily follows that the suit can only be maintained by some party *directly* interested in the trust under the will; that is, by an executor or a trustee, or by a *cestui que trust* or a legatee; it cannot be maintained by an heir at law, or a devisee of a mere legal title, and much less by a creditor.³

§ 1157. **The Same. A Broader Jurisdiction in Some States.** — It cannot be denied that there are decisions by able courts which take another and less restricted view of the jurisdiction. According to the doctrine of these cases, the jurisdiction to construe wills is not necessarily connected with the general jurisdiction over trusts; the presence of a trust express or implied is not made a cri-

¹ Chipman v. Montgomery, 63 N. Y. 221, 230, per Allen, J.; Bailey v. Briggs, 56 N. Y. 407, per Folger, J.

² Thus in Bowers v. Smith, 10 Paige, 193, it is held that “an executor takes the legal estate in the personal property of the testator as trustee for the legatees or next of kin, and chancery having general jurisdiction in cases of trusts, any person having an interest in such property may file a bill in that court to have the construction of the will settled, or to have the question as to the validity of any of its provisions determined, so far as concerns the interest of the claimant in the property, and to have a decree for such portions of the property as he is entitled to receive. But testator’s heir at law, or devisee claiming a mere legal estate, where there is no trust, cannot come into equity for the mere purpose of obtaining a construction to a will.” This decision clearly distinguishes be-

tween a will of personal property and one of land, and does *not* require any trust to be created by the instrument in the former. And see Onderdonk v. Mott, 34 Barb. 106; Bliven v. Seymour, 88 N. Y. 469. Some later New York decisions fail to recognize this distinction, and deny the jurisdiction unless the will of personal property creates a trust as well as one of lands: Walrath v. Handy, 24 How. Pr. 353; Wager v. Wager, 21 Hun, 93; but in Bliven v. Seymour, 88 N. Y. 469, a will of personal property was construed, although no trust whatever was created; and see Dill v. Wisner, 88 N. Y. 153, 160. [In Wager v. Wager, 89 N. Y. 161, the same case in the court below was reversed, and the above distinction was recognized, per Rapallo, J.; see also Read v. Williams, 125 N. Y. 560; 21 Am. St. Rep. 748.

³ See cases cited in the second note before the last.

terion of its existence nor of its proper exercise; it is regarded as arising wholly from the complicated character of provisions in a will, from the difficulty of understanding their meaning, or the doubt and uncertainty as to the rights and interests of the parties claiming under them. In short, the jurisdiction to construe a will exists and is exercised whenever its terms are really difficult or doubtful, or their validity is contested, without reference to the presence or absence of any trust.¹ It is well settled that a court will never entertain a suit to give a construction or declare the rights of parties upon a state of facts which has not yet arisen, nor upon a matter which is future, contingent, and uncertain;² nor upon a matter which is wholly past, as upon the past conduct of the executor.³ The jurisdiction will not, it seems, be extended so as to permit an administrator to obtain the direction of a court of equity with regard to the proper discharge of his duties.⁴

§ 1158. **Suit to Establish a Will.** — The rule is settled in England that a devisee in possession is entitled at any time to maintain a suit against the heir at law of the testator for the purpose of establishing the will, although the heir has brought an action of ejectment to recover the land, although the will creates no trusts, but gives the devisee a purely legal estate, and although it is not necessary to administer the estate under the direction of the

¹ *Rosenberg v. Frank*, 58 Cal. 387; see extract from opinion *ante*, under § 1153. The clause construed in this case was a residuary bequest, creating no trust, and the opinion does not treat the jurisdiction as incidental to the power of equity over express trusts, but as an incident of the power over administrations; *Sellers v. Sellers*, 35 Ala. 235; *Trotter v. Blocker*, 6 Port. 269; *Baldwin v. Bean*, 59 Me. 481; *First Baptist Church v. Robberston*, 71 Mo. 326; *Benham v. Hendrickson*, 32 N. J. Eq. 441; *Purvis v. Sherrod*, 12 Tex. 140; *Howze v. Howze*, 14 Tex. 232; *Little v. Birdwell*, 21 Tex. 597; 73 Am. Dec. 242; *Gibbes v. Elliott*, 5 Rich. Eq. 327.

² *Minot v. Taylor*, 129 Mass. 160; *Tayloe v. Bond*, Busb. Eq. 5; *Marrow v. Marrow*, Busb. Eq. 148; *Goddard v. Brown*, 12 R. I. 31; [*Little v. Thorne*, 93 N. C. 69.]

³ *Sohier v. Burr*, 127 Mass. 221; *Tayloe v. Bond*, Busb. Eq. 5; *Marrow v. Marrow*, Busb. Eq. 148. In short, a construction can only be given when it will determine and direct some present or continuing act or conduct of the executor or trustee: *Powell v. Demming*, 22 Hun. 235.

⁴ *Clay v. Gurley*, 62 Ala. 14; *Ferrand v. Howard*, 3 Ired. Eq. 381; but see *Stevens v. Warren*, 101 Mass. 564.

court of chancery.¹ A devisee may maintain a similar suit against parties claiming under another will of the same testator.² In both instances the suit is in the nature of a bill to quiet title. For obvious reasons, no such jurisdiction probably exists in any of the states, — certainly not in the great majority of them.³

¹ Boyse v. Rossborough, Kay, 71; 3 De Gex, M. & G. 817; affirmed *sub nom.* Colclough v. Boyse, 6 H. L. Cas. 1. This case was very carefully considered by all of the courts, and the previous authorities were quoted and examined in a most exhaustive manner.

² Lovett v. Lovett, 3 Kay & J. 1; and see *In re Tayleur*, L. R. 6 Ch. 416.

³ [Anderson v. Anderson, 112 N. Y. 104.] The sole ground of this jurisdiction in England was a condition of the law which does not exist in any American state, and no longer exists in that country. Until the statute creating the probate court (about 1857: 20 & 21 Vict., c. 77), there was no jurisdiction whatever to admit a will of land to probate; the only mode of testing the validity of such will was by an action of ejectment between the heir and devisee. If the devisee is in possession, he cannot, of course,

bring an action of ejectment, but must await an action brought by the heir. For this reason, to enable the devisee to test the validity of the will at once, and to relieve him from the cloud hanging indefinitely over his title from the heir's adverse claim, the jurisdiction described in the text exists. No such reasons exist in this country. A will of land as well as one of personal property may be admitted to probate, and in some states the probate is conclusive upon all parties. The devisee can therefore, at any time, establish the validity of the will in the probate court, and is under no possible necessity of resorting to equity for such relief. On the contrary, the doctrine seems to be general, if not universal, throughout the states, that a court of equity will not recognize nor act upon a will of land or of personalty until it has been admitted to probate: See cases cited *ante*, in note under § 1154.

CHAPTER FOURTH.

EQUITABLE ESTATES ARISING FROM CONVERSION.

SECTION I.

THE CONVERSION OF REAL ESTATE INTO PERSONAL, AND
OF PERSONAL ESTATE INTO REAL.

ANALYSIS.

- § 1159. Definition and general nature.
- § 1160. I. What words are sufficient to work a conversion.
- § 1161. The same; under a contract of sale.
- § 1162. II. Time from which the conversion takes effect.
- § 1163. The same; in contracts of sale with option.
- § 1164. III. Effects of a conversion; land directed or agreed to be sold.
- § 1165. The same; money directed or agreed to be laid out in land.
- § 1166. Limitations on these effects.
- § 1167. Conversion by paramount authority; compulsory sale of land under statute; sale by order of court.
- § 1168. Conversion as between life tenant and remainderman.

§ 1159. **Definition and General Nature.**—The fundamental principle that equity regards that as done which ought to be done, which underlies the doctrine of equitable conversion, and of which it is the most remarkable illustration, has been fully discussed and explained in a former volume.¹ Conversion has been briefly and accurately defined as “that change in the nature of property by which, for certain purposes, real estate is considered as personal, and personal estate as real, and transmissible and descendible as such.”² No express declaration in the

¹ See *ante*, vol. 1, §§ 364–371.

² See the more full definition given by Sir Thomas Sewell, M. R., in *Fletcher v. Ashburner*, 1 Brown Ch. 497, quoted *ante*, in § 371, and cases cited in note 2 thereunder. In *Lorrillard v. Coster*, 5 Paige, 172, 218, Chancellor Walworth thus described the doctrine: “Upon the principles of equitable con-

version, money directed by the testator to be employed in the purchase of land, or land directed to be sold and turned into money, is in this court, for all the purposes of the will, considered as that species of property into which it is directed to be converted, so far as the purposes for which such conversion is directed to be made

instrument is needed that land shall be treated as money although not sold, or that money shall be deemed land although not actually laid out in the purchase of land. The only essential requisite is an absolute expression of an intention that the land *shall* be sold and turned into money, or that the money *shall* be expended in the purchase of land. If this intention is sufficiently expressed, the circumstance that the land has not yet been sold and turned into money, or that the money has not yet been laid out in land, is the very condition of fact in which the doctrine of conversion comes into play, to which the maxim, Equity regards that as done which

are legal, and can be carried into effect. The same principle is also applicable to the case of a direction in a will to sell one piece of land and to convert it into another, for the purposes of the will, by investing the proceeds of the sale in the purchase of such other lands, under a valid power in trust to make such sale and re-investment. The whole doctrine of equitable conversion depends upon the well-established and familiar principle that a court of equity looks upon that as done which the parties to an agreement or marriage settlement have contracted to do, or which the testator by his will has directed to be done, so far as the contract of the parties, or the will of the decedent, could have been carried into effect without violating any equitable principle or rule of law." In addition to the cases cited under § 371, see the following illustrations of the general doctrine: *Abbott v. Lee*, 2 Vern. 284; *Symons v. Rutter*, 2 Vern. 227; *Lancy v. Fairechild*, 2 Vern. 101; *Kettleby v. Atwood*, 1 Vern. 298; *Anand v. Honeywood*, 1 Vern. 345; *Lingen v. Sowray*, 1 Eq. Cas. Abr. 175; 1 P. Wms. 172; *Edwards v. Countess of Warwick*, 2 P. Wms. 171, 175, and note; *Chaplin v. Horner*, 1 P. Wms. 483; *Green v. Smith*, 1 Atk. 572; *Walker v. Deune*, 2 Ves. 170; *Griffith v. Ricketts*, 7 Hare, 299; *Taylor v. Taylor*, 3 De Gex, M. & G. 190; *Holland v. Cruft*, 3 Gray, 162, 180; *Prentice v. Janssen*, 79 N. Y. 478; *Power v. Cassidy*, 79 N. Y. 602; 35 Am. Rep. 550; *Van Vechten v. Keator*, 63 N. Y. 52; *Moncrief v. Ross*, 50 N. Y. 431; *White v. Howard*, 45 N. Y. 144;

Hood v. Hood, 85 N. Y. 561; *Delaney v. McCormack*, 88 N. Y. 174; *Wells v. Wells*, 88 N. Y. 323; *Lawrence v. Elliott*, 3 Redf. 235; *Klock v. Buel*, 56 Barb. 398; *Arnold v. Gilbert*, 5 Barb. 190; *Pleasant's Appeal*, 77 Pa. St. 356; *Eby's Appeal*, 84 Pa. St. 241; *McClure's Appeal*, 72 Pa. St. 414; *Jones v. Caldwell*, 97 Pa. St. 42; *Page's Estate*, 75 Pa. St. 87; *Brolasky v. Gally's Ex'rs*, 51 Pa. St. 509; *Estate of Dobson*, 11 Phila. 81; *Estate of McAvoys*, 12 Phila. 83; *Parkinson's Appeal*, 32 Pa. St. 455; *Burr v. Sim*, 1 Whart. 232; 29 Am. Dec. 48; *Cook's Ex'r v. Cook's Adm'r*, 20 N. J. Eq. 375; *Smith v. Bayright*, 34 N. J. Eq. 424; *Scudder's Ex'rs v. Vanarsdale*, 13 N. J. Eq. 109; *Orrick v. Boehm*, 49 Md. 72; *Lynn v. Gephart*, 27 Md. 547, 563; *Thomas v. Wood*, 1 Md. Ch. 296; *Ex parte McBee*, 63 N. C. 332; *Taylor v. Johnson*, 63 N. C. 381; *Masterson v. Pullen*, 62 Ala. 145; *High v. Worley*, 33 Ala. 196; *Succession of Gamble*, 23 La. Ann. 9; *Collins v. Champ's Heirs*, 15 B. Mon. 118; 61 Am. Dec. 179; *Green v. Johnson*, 4 Bush, 164, 167; *Hocker v. Gentry*, 3 Met. (Ky.) 463; *Dodge v. Williams*, 46 Wis. 70; *Gould v. Taylor Orphan Asylum*, 46 Wis. 106; *Janes v. Throckmorton*, 57 Cal. 368; *Hilton v. Hilton*, 2 McAr. 70. [See also *Robert v. Corning*, 89 N. Y. 239; *Delafield v. Barlow*, 107 N. Y. 535; *Greenland v. Waddell*, 116 N. Y. 239; 15 Am. St. Rep. 400; *Fraser v. Trustees*, 124 N. Y. 480; *Perkins v. Coughlan*, 148 Mass. 30; *Parker v. Glover*, 42 N. J. Eq. 559; *Matter of Corrington*, 124 Ill. 363.]

ought to be done, applies.¹ The true test in all such cases is a simple one: Has the will or deed creating the trust absolutely directed, or has the contract stipulated, that the real estate be turned into personal or the personal estate be turned into real? As this doctrine of conversion is wholly a creation of equity jurisprudence, the estates or interests which result from it are purely equitable, and of equitable cognizance alone. Equity has exclusive jurisdiction of suits to maintain and protect such interests, except where, in this country, the doctrine, as it affects the devolution of property, is recognized and followed by the probate courts in the settlement and distribution of decedents' estates. The practical questions growing out of the operation of the doctrine are generally connected with the devolution — inheritance or succession — of the property converted upon the death of the person for whose benefit it was originally given, or with his transfer of it by assignment, or with the claims to it of third parties.²

¹ In *Lechmere v. Earl of Carlisle*, 3 P. Wms. 211, 215, Sir Joseph Jekyll said: "The forbearance of the trustees in not doing what it was their office to have done shall in no sort prejudice the *cestuis que trustent*, since at that rate it would be in the power of trustees, either by doing or delaying to do their duty, to affect the right of other persons; which can never be maintained. Wherefore the rule in all such cases is, that what ought to have been done shall be taken as done; and a rule so powerful it is as to alter the very nature of things, — to make money land, and on the contrary, to turn land into money. Thus money articed to be laid out in land shall be taken as land, and descend to the heir, and on the other hand, land agreed to be sold shall be considered as personal estate." In *Scudamore v. Scudamore*, Prec. Ch. 543, where a sum of money had been bequeathed to be laid out in the purchase of land, Lord Macclesfield said: "If the purchase had been made, it [i. e., the land] must have gone to the heir; but if the trustee, by delaying the purchase, may alter the right and give it to the executors, this would be to make it the trustee's will,

and not the will of the first testator, which would be very unreasonable and inconvenient." From the general definition given in the text, and from the foregoing extracts, and in fact from all the decisions upon the subject, it is plain that an equitable conversion, and the equitable estates or interests arising therefrom, can only exist while the directions of the will or deed or the stipulations of the contract remain, to some extent at least, executory and unperformed; there can be no place for the operation of the doctrine, after these directions or stipulations have been fully carried into effect and completely executed.

² For illustration, if money had been given by will or deed to trustees upon trust to purchase land therewith and convey the same to A in fee, and A died before the trustees had made the purchase, and while the money was in their hands, the important question as to A's interest would for the first time practically arise: Was that interest real estate, so that it descended to A's heirs if he died intestate? or was it personal estate, so that it devolved upon his administrator? Would it pass by a general bequest of personal

§ 1160. I. What Words are Sufficient to Effect a Conversion. — The whole scope and meaning of the fundamental principle underlying the doctrine are involved in the existence of a *duty* resting upon the trustees or other parties to do the specified act; for unless the equitable *ought* exists, there is no room for the operation of the maxim, Equity regards that as done which ought to be done.¹ The rule is therefore firmly settled, that in order to work a conversion *while the property is yet actually unchanged* in form, there must be a clear and imperative direction in the will, deed, or settlement, or a clear imperative agreement in the contract, to convert the property, — that is, to sell the land for money, or to lay out the money in the purchase of land. If the act of converting — that is, the act itself of selling the land or of laying out the money in land — is left to the option, discretion, or choice of the trustees or other parties, then no equitable conversion will take place, because no *duty* to make the change rests upon them.² It is not essential, however, that

property, or by a general devise of lands? If A was a married man, was his widow entitled to dower in it? If A was a married woman, was her husband entitled to curtesy? Where the parties to a contract for the sale of land die before execution, are the vendee's heirs or his personal representatives entitled to the benefit of the agreement? Does the purchase-money, when paid, belong to the heirs or to the administrators of the vendor? These are the kinds of questions which are determined by the doctrine of conversion; and their solution depends upon the nature of the estates resulting from the operation of that doctrine upon the interests of the original parties to the will, deed, or contract. No other doctrine is perhaps more important in the equity jurisprudence of England, both because such trusts by wills, deeds, and family settlements are there very frequent, and because the common-law difference between the descent of land and the succession of personal property is still preserved in all of its integrity. The applications of the doctrine to settle-

ments often give rise to questions of great difficulty. In our own country the doctrine is theoretically adopted in all the states; but its applications are much less frequent and more simple than in England. With us, trust estates and family settlements are comparatively very few, and the tendency of modern legislation in many of the states is toward a uniformity in the rules of law which regulate the descent of lands and the devolution of personal property. In a few of the states the difference has been completely abolished, and both real and personal estate devolve in the same proportions to the same parties. It necessarily follows that many of the questions connected with conversion of the most frequent occurrence and of the highest importance in England are practically unknown in this country, and need nothing more than a bare mention or even allusion in a treatise upon the American equity jurisprudence.

¹ See *ante*, §§ 364, 365.

² It should be carefully noticed that the option or discretion spoken of in

the direction should be *express*, in order to be imperative; it may be necessarily implied. Where a power to convert is given without words of command, so that there is an appearance of discretion, if the trusts or limitations are of a description exclusively applicable to one species of property, this circumstance is sufficient to outweigh the appearance of an option, and to render the whole imperative. Thus if a power is given to lay out money in land, but the limitations expressed are applicable only to land, this will show an intention that the money should

this rule means an option with respect to the very act of changing the form of the property. If the option is *merely as to the time* when this shall be done, a conversion may take place, as will be more fully stated hereafter. The general rule of the text is illustrated by the following cases: *Curling v. May*, cited 3 Atk. 255 (the leading case); *Polley v. Seymour*, 2 Younge & C. 708; *Swann v. Fonnereau*, 3 Ves. 41; *Amler v. Amler*, 3 Ves. 583; *Van v. Barnett*, 19 Ves. 102; *Bourne v. Bourne*, 2 Hare, 35; *Grieverson v. Kirsopp*, 2 Keen, 653; *Lucas v. Brandreth*, 28 Beav. 273; *Smithwick v. Smithwick*, 12 Ir. Ch. Rep. 181; *De Beauvoir v. De Beauvoir*, 3 H. L. Cas. 524, 548; *Greenway v. Greenway*, 2 De Gex, F. & J. 128; *Wall v. Colthead*, 2 De Gex & J. 683; *Rich v. Whitfield*, L. R. 2 Eq. 583; *Hood v. Hood*, 85 N. Y. 561; *Prentice v. Janssen*, 79 N. Y. 478; *Power v. Cassidy*, 79 N. Y. 602; 35 Am. Rep. 550; *Fisher v. Banta*, 66 N. Y. 468; *Moncrief v. Ross*, 50 N. Y. 431; *White v. Howard*, 46 N. Y. 144; *Lawrence v. Elliott*, 3 Redf. 235; *Dominick v. Michael*, 4 Sand. 374; *Peterson's Appeal*, 83 Pa. St. 397; *Jones v. Caldwell*, 97 Pa. St. 42; *McClure's Appeal*, 72 Pa. St. 414; *Miller's and Bowman's Appeal*, 60 Pa. St. 404; *Estate of Dobson*, 11 Phila. 81; *Chew v. Nicklin*, 45 Pa. St. 84; *Anewalt's Appeal*, 42 Pa. St. 414; *Bleight v. Manufacturers' etc. Bank*, 10 Pa. St. 131; *Cook's Ex'r v. Cook's Adm'r*, 20 N. J. Eq. 375; *Pratt v. Taliaferro*, 3 Leigh, 419; *Hilton v. Hilton*, 2 McAr. 70; *Montgomery v. Milliken*, *Smedes & M. Ch.* 495; *Dodge v. Williams*, 46 Wis. 70; *Gould v. Taylor Orphan Asylum*, 46 Wis. 106; *Janes v. Throck-*

morton, 57 Cal. 368. [See also *Chamberlain v. Taylor*, 105 N. Y. 185; *Scholle v. Scholle*, 113 N. Y. 261; *Clift v. Moses*, 116 N. Y. 144; *Mat-ter of McComb*, 117 N. Y. 378; *Pe-rot's Appeal*, 102 Pa. St. 235; *Hunt's Appeal*, 105 Pa. St. 141; *Sheridan v. Sheridan*, 136 Pa. St. 14; *Greenough v. Small*, 137 Pa. St. 131; *Mills v. Harris*, 104 N. C. 626; *Haward v. Peavey*, 128 Ill. 430; 15 Am. St. Rep. 120; *Ford v. Ford*, 70 Wis. 19; 5 Am. St. Rep. 117.] Whenever trustees are clothed with a discretion and exercise it, and thus actually make a conversion, the property will, in general, pass in the nature and form to which they have converted it: *Bourne v. Bourne*, 2 Hare, 35; *In re Ibbitson's Estate*, L. R. 7 Eq. 226; *Rich v. Whitfield*, L. R. 2 Eq. 583; *Lawrence v. Elliott*, 3 Redf. 235; *Van Vechten v. Keator*, 63 N. Y. 52; *White v. Howard*, 46 N. Y. 144. Mere discretion as to the time or manner of effecting the sale does not prevent a conversion from taking place: *Stagg v. Jackson*, 1 N. Y. 206; *Tazewell v. Smith's Adm'r*, 1 Rand. 313; 10 Am. Dec. 533; [also *Ford v. Ford*, 70 Wis. 19; 5 Am. St. Rep. 117; *Lent v. Howard*, 89 N. Y. 169; *Mellon v. Reed*, 123 Pa. St. 1; *Bell v. Bell*, 25 S. C. 149;] but see *Christler's Ex'r v. Meddis*, 6 B. Mon. 35. Money directed to be laid out in land with consent or on request, *and not without*, is not converted until consent is given or request made: *Davies v. Goodhew*, 6 Sim. 585; *Sykes v. Sheard*, 33 Beav. 114; but consent must not be withheld from improper or interested motives: *Lord v. Wightwick*, 4 De Gex, M. & G. 803.

be so laid out, and will amount to an imperative direction to convert, for otherwise the terms of the instrument could not be carried into effect.¹ In fact, the whole result depends upon the intention. If by express language, or by a reasonable construction of all its terms, the instrument shows an intention that the original form of the property shall be changed, then a conversion necessarily takes place.²

§ 1161. **Under a Contract of Sale.**—A contract of sale, if all the terms are agreed upon, also operates as a conversion of the property, the vendor becoming a trustee of the estate for the purchaser, and the purchaser a trustee of the purchase-money for the vendor.³ In order to work a conversion, the contract must be valid and binding, free from inequitable imperfections, and such as a court of equity will specifically enforce against an unwilling purchaser.⁴ The fact that the contract of purchase is entirely at the option of the purchaser does not prevent its working a conversion, if he avails himself of the option.⁵

¹ *Earlom v. Saunders*, Amb. 241; *Johnson v. Arnold*, 1 Ves. Sr. 169; *Hereford v. Ravenhill*, 5 Beav. 51; *Simpson v. Ashworth*, 6 Beav. 412; *Cowley v. Hartstonge*, 1 Dow, 361; *Cookson v. Cookson*, 12 Clark & F. 121; *De Beauvoir v. De Beauvoir*, 3 H. L. Cas. 524; *In the Matter of De Lancey*, L. R. 5 Ex. 102; *Atwell v. Atwell*, L. R. 13 Eq. 23; *Power v. Cassidy*, 79 N. Y. 602; 35 Am. Rep. 550.

² *Thornton v. Hawley*, 10 Ves. 129; *Davies v. Goodhew*, 6 Sim. 585; *Burrell v. Baskerfield*, 11 Beav. 525; *Cornick v. Pearce*, 7 Hare, 477; *Mower v. Orr*, 7 Hare, 473; *Fisher v. Banta*, 66 N. Y. 465; *Dodge v. Pond*, 23 N. Y. 69; *Stagg v. Jackson*, 1 N. Y. 206; *Wurt's Ex'rs v. Page*, 19 N. J. Eq. 365; *Page's Estate*, 75 Pa. St. 87; *Dodge v. Williams*, 46 Wis. 70; *Gould v. Taylor Orphan Asylum*, 46 Wis. 106; and see cases in the two preceding notes. [See also *Ramsay v. Hanlon*, 33 Fed. Rep. 425; *Lent v. Howard*, 89 N. Y. 169; *Asche v. Asche*, 113 N. Y. 233; *King v. King*, 13 R. I. 501; *Roy v. v. Monroe*, 47 N. J. Eq. 356; *Hunt's Appeal*, 105 Pa. St. 128; *Mellon v.*

Reed, 123 Pa. St. 14; *Ford v. Ford*, 70 Wis. 19; 5 Am. St. Rep. 117; but such intention must clearly appear, especially when no express power to sell is contained in the will: *Hobson v. Hale*, 95 N. Y. 588, and cases cited; *Hale v. Hale*, 95 Ill. 399.]

³ *Green v. Smith*, 1 Atk. 572; *Pollexfen v. Moore*, 3 Atk. 272; *Atcherley v. Vernon*, 10 Mod. 518; *Masterson v. Pullen*, 62 Ala. 145; and see *ante*, §§ 368, 372, and cases cited; [also *post*, §§ 1260, 1261, 1406.]

⁴ *Garnett v. Acton*, 28 Beav. 333; *Ingle v. Richards*, 28 Beav. 361. [See also *Mills v. Harris*, 104 N. C. 626.] Nevertheless, it has been held that a verbal contract by an owner in fee who dies intestate before it is performed, if adopted by his heir voluntarily, and not under a mistake, will effect a conversion *retrospectively*, and the purchase-money will belong to the next of kin: *Frayne v. Taylor*, 10 Jur., N. S., 119.

⁵ *Lawes v. Bennett*, 1 Cox, 167; *Townley v. Bedwell*, 14 Ves. 591; *Collingwood v. Row*, 3 Jur., N. S., 785; for further on the subject of such optional contracts, see *post*, § 1163.

§ 1162. II. Time from Which the Conversion Takes Effect. — This, like all other questions of intention, must ultimately depend upon the provisions of the particular instrument. The instrument might in express terms contain an absolute direction to sell or to purchase at some specified future time; and if it created a trust to sell upon the happening of a specified event, which might or might not happen, then the conversion would only take place from the time of the happening of that event, but would take place when the event happened exactly as though there had been an absolute direction to sell at that time.¹ Subject to this general modification, the rule is settled that a conversion takes place in wills as from the death of the testator, and in deeds, and other instruments *inter vivos*, as from the date of their execution.²

¹ Ward v. Arch, 15 Sim. 389; Polley v. Seymour, 2 Younge & C. 708; Moncrief v. Ross, 50 N. Y. 431; McClure's Appeal, 72 Pa. St. 414. [See also Keller v. Harper, 64 Md. 74; Massey v. Modawell, 73 Ala. 421.]

² *Wills*: Beauchlerk v. Mead, 2 Atk. 167; Fisher v. Banta, 66 N. Y. 468; Cook's Ex'r v. Cook's Adm'r, 20 N. J. Eq. 375; Jones v. Caldwell, 97 Pa. St. 42; McClure's Appeal, 72 Pa. St. 414. [See also Morris v. Griffiths, 26 Ch. Div. 601; Ramsey v. Hanlon, 33 Fed. Rep. 425; Lent v. Howard, 89 N. Y. 169; Underwood v. Curtis, 127 N. Y. 523; Dutton v. Pugh, 45 N. J. Eq. 426; Reiff v. Strite, 54 Md. 298; Carr v. Branch, 85 Va. 597.]

Deeds: Griffith v. Ricketts, 7 Hare, 299, 311; Clarke v. Franklin, 4 Kay & J. 257; Hewitt v. Wright, 1 Brown Ch. 86. In Griffith v. Ricketts, *supra*, Wigram, V. C., explained the rule and its operation as follows: "A deed differs from a will in this material respect: the will speaks from the death, the deed from delivery. If, then, the author of the deed impresses upon his real estate the character of personalty, that, as between his real and personal representatives, makes it personal, and not real, estate from the delivery of the deed, and consequently at the time of his death. The deed thus altering the actual character of the property is, so to speak, equivalent to a gift of

the expectancy of the heir at law to the personal estate of the author of the deed. The principle is the same in the case of a deed as in the case of a will; but the application is different, by reason that the deed converts the property in the lifetime of the author of the deed, whereas in the case of a will the conversion does not take place until the death of the testator, and there is no principle on which the court, as between the real and personal representatives (between whom there is confessedly no equity), should not be governed by the simple effect of the deed in deciding to which of the two claimants the surplus belongs." In Clarke v. Franklin, *supra*, Wood, V. C., after referring to Hewitt v. Wright, which was a case of conversion of land into personalty, said: "The doctrine of the converse case of personalty directed by deed or will to be converted into land is fully discussed by Lord Eldon in Wheldale v. Partridge, 8 Ves. 227, where, upon the special terms of the instrument, it was held not to be one which upon its execution clothed the property with real uses; but Lord Eldon said that but for those special provisions, and if there had been nothing more in the deed, the 'property would, immediately upon the execution of the deed, have been impressed with real qualities and clothed with real uses, and the money

§ 1163. **Time in Contracts of Sale with Option.**—In contracts of sale upon the purchaser's option, the question whether or not a conversion is effected at all cannot, of course, be determined until the purchaser exercises his option; but the moment when he *does* exercise it, the conversion, as between parties claiming title under the vendor, *relates back* to the time of the execution of the contract. Thus where a lessee with an option to purchase—or any other purchaser with an option—duly declares his option after the death of the lessor or vendor, who is the owner in fee, the realty is thereby converted *retrospectively* as between those claiming under the lessor or vendor, or under his will; that is, as between the heir or devisee on one side and the legatees or next of kin on the other, the proceeds will go to his personal representatives, though the heir or devisee will be entitled to the rents up to the time when the option is declared.¹ It should be

would have been land'; clearly recognizing the rule that conversion takes effect from the moment of the execution of the deed; and the rights of the parties and the character in which the property is taken by them are to be determined according to that conversion. The principle of these authorities is therefore clearly settled; and where, as here, real estate is settled by deed upon trust to sell for certain specified purposes, and one of those purposes fails, there, whether the trust for sale is to arise in the lifetime of the settlor or not until after his decease, the property to that extent results to the settlor as personalty from the moment the deed is executed."

It should be observed, however, that mortgages, although containing trusts for sale, or powers in trust to sell, constitute an exception to the general rule that such deeds work a conversion from the date of their execution, since the real object of mortgages is simply to raise money and secure the repayment thereof, and not to effect a devolution of the property: *Wright v. Rose*, 2 Sim. & St. 323; *Bourne v. Bourne*, 2 Hare, 35; *Jones v. Davies*, L. R. 8 Ch. Div. 205.

¹ *Lawes v. Bennett*, 1 Cox, 167; *Townley v. Bedwell*, 14 Ves. 591; *Col-*

lingwood v. Row, 3 Jur., N. S., 785; *Goold v. Teague*, 5 Jur., N. S., 116; *Weeding v. Weeding*, 1 Johns. & H. 424; *Woods v. Hyde*, 31 L. J. Ch. 295; *Ex parte Hardy*, 30 Beav. 206; *Drant v. Vause*, 1 Younge & C. Ch. 580; *Emuss v. Smith*, 2 De Gex & S. 722; *D'Arras v. Keyser*, 26 Pa. St. 249; *Kerr v. Day*, 14 Pa. St. 112, 114; 53 Am. Dec. 526. The cases of *Drant v. Vause* and *Emuss v. Smith* may seem to be opposed to this rule, but they were decided upon their very special facts, and their true meaning is explained in *Weeding v. Weeding*. This rule is plainly one which may operate very harshly, since the option might not be declared until possibly years after the vendor's death, and its correctness upon principle has been doubted by the ablest judges. It has recently been decided that it shall not be extended, that its operation is confined to the question of conversion as between the *heir or devisee of the vendor and his personal representatives*, and that it does not apply as between the *vendor and purchaser themselves*; as between these two parties the conversion does not and cannot take place until the purchaser declares his option: *Edwards v. West*, L. R. 7 Ch. Div. 558, 562, 563.

carefully observed, however, that this rule is confined to conversion as between the parties claiming title under the vendor or lessor, — his heirs or devisees, or his legatees, next of kin, and personal representatives, — and does not apply as between the vendor and purchaser themselves.¹

§ 1164. **III. Effects of a Conversion — Land Directed or Agreed to be Sold.** — So far as is necessary to carry out the lawful purposes of the instrument, will, deed, settlement, or contract, and to determine the property rights of all parties claiming under or through it, equity follows the doctrine into all of its legitimate consequences, and treats the property, from the time at which the conversion takes place, as to all intents of the kind and form into which it should have been changed, and determines the rights of parties to it as in that kind and form.² Land directed or agreed to be sold, although yet unsold, is regarded and treated as money. It will not pass under a devise of land or of real estate.³ It will pass under a general gift, transfer, or bequest of personalty, or under a residuary bequest of personal property.⁴ In the absence of a will, it goes to the personal representatives of the intestate who would have been or was entitled to it. It is therefore always personal assets in the hands of executors and administrators for which they are accountable.⁵

¹ *Edwards v. West*, L. R. 7 Ch. Div. 858, 862, 863.

² See cases cited *ante*, under §§ 1159, 1162.

³ *Elliott v. Fisher*, 12 Sim. 505; but see *Klock v. Buell*, 56 Barb. 393.

⁴ *Stead v. Newdigate*, 2 Mer. 521; *Farrar v. Earl of Winterton*, 5 Beav. 1; *Wall v. Colshead*, 2 De Gex & J. 683; *Chandler v. Pocock*, L. R. 16 Ch. Div. 648; 15 Ch. Div. 491; *Blake v. Blake*, L. R. 15 Ch. Div. 481; *Fisher v. Banta*, 66 N. Y. 468; *Estate of Dobson*, 11 Phila. 81; and see cases in next following note; [see also *Welsh v. Crater*, 32 N. J. Eq. 177.] And thus such a bequest to a corporation may be valid, although it is incompetent to receive a devise of land: *Dodge v. Williams*, 46 Wis. 70; *Gould v. Taylor Orphan Asylum*, 46 Wis. 106.

⁵ *Ashby v. Palmer*, 1 Mer. 296; *Elliott v. Fisher*, 12 Sim. 505; *Griffith v. Ricketts*, 7 Hare, 299; *Hoddel v. Pugh*, 33 Beav. 489; *Hood v. Hood*, 85 N. Y. 561; *Van Vechten v. Keator*, 63 N. Y. 52; *Moncrief v. Ross*, 50 N. Y. 431; *Fisher v. Banta*, 66 N. Y. 468; *Freeman v. Smith*, 60 How. Pr. 311; *Wurts's Ex'rs v. Page*, 19 N. J. Eq. 365; *Eby's Appeal*, 84 Pa. St. 241; *Jones v. Caldwell*, 97 Pa. St. 42; *McClure's Appeal*, 72 Pa. St. 414; *Brolasky v. Gally's Ex'rs*, 51 Pa. St. 509; *Parkinson's Appeal*, 32 Pa. St. 455; *Johnson v. Bennett*, 39 Barb. 237; *Harris v. Slaght*, 46 Barb. 470; *Ferguson v. Stuart's Ex'rs*, 14 Ohio, 140, 146; *Collier v. Collier's Ex'rs*, 3 Ohio St. 369; *Rawlings's Ex'r v. Landes*, 2 Bush, 158; *Loftis v. Glass*, 15 Ark. 680; *Hurt v. Fisher*, 1 Har.

As in the case of a corporation, so in that of an alien, a bequest of land thus converted into money is valid, although a devise of land is or may be void.¹ The same rules apply to the conversion wrought by contracts for the sale of land.²

§ 1165. **Money Directed or Agreed to be Laid out in Land.**—Money and other personal property directed or agreed to be laid out in the purchase of land becomes and is regarded as land in equity. It will therefore pass under a general devise of lands or of real estate; it will descend to the heir; and will not be included in a bequest of money or personal property.³ If the heir die intestate before the purchase has been made, the fund will descend to his heir.⁴ Money will be considered as thus converted, notwithstanding a direction for investment *until* a purchaser can be found.⁵ The money of a married woman directed to be laid out in land is liable to her husband's curtesy, and without doubt, under analogous

& G. 88, 96; Carr v. Ireland, 4 Md. Ch. 251; Maddox v. Dent, 4 Md. Ch. 543; Smithers v. Hooper, 23 Md. 273; Washington's Ex'r v. Abraham, 6 Gratt. 66, 77; Siter v. McClanachan, 2 Gratt. 280; Commonwealth v. Martin's Ex'rs, 5 Munf. 117, 127; Brothers v. Cartwright, 2 Jones Eq. 113; 64 Am. Dec. 563; Croom v. Herring, 4 Hawks, 393; Ex parte McBee, 63 N. C. 332; Wilkins v. Taylor, 8 Rich. Eq. 291; and see 1 Lead. Cas. Eq., 4th Am. ed., 1157–1160, 1160–1162. [It is not subject, as land, to the lien of a judgment against the person entitled to the proceeds of its sale: Henderson v. Henderson, 133 Pa. St. 399; 19 Am. St. Rep. 650; Turner v. Davis, 41 Ark. 270. A mortgage of it operates as an equitable assignment: Bailey v. Allegheny Nat. Bank, 104 Pa. St. 425.]

¹ Du Hourmelin v. Sheldon, 1 Beav. 79; 4 Mylne & C. 525; Craig v. Leslie, 3 Wheat. 563; Anstice v. Brown, 6 Paige, 448; De Barante v. Gott, 6 Barb. 492, 497; as to corporations, see preceding note.

² Masterson v. Pullen, 62 Ala. 145;

and see *ante*, §§ 368, 372, and cases cited.

³ Biddulph v. Biddulph, 12 Ves. 161; Green v. Stephens, 17 Ves. 64, 77; Hawley v. James, 5 Paige, 318, 443; Gott v. Cook, 7 Paige, 521, 534; Tayloe v. Johnson, 63 N. C. 381; Green v. Johnson, 4 Bush, 164; Collins v. Champ's Heirs, 15 B. Mon. 118; 61 Am. Dec. 179; and see 1 Lead. Cas. Eq., 4th Am. ed., 1162–1171. [It is said, however, that before the executor consents to the legacy it is not relieved from contributing *pro rata* with other legacies to the payment of debts: McFadden v. Hefley, 28 S. C. 317; 13 Am. St. Rep. 675.]

⁴ Scudamore v. Scudamore, Prec. Ch. 543; Edwards v. Countess of Warwick, 2 P. Wms. 171; Lechmere v. Earl of Carlisle, 3 P. Wms. 211, 222; Gillies v. Longlands, 4 De Gex & S. 372.

⁵ Edwards v. Countess of Warwick, 2 P. Wms. 171. There can be no doubt that the fund would be bound in equity by a judgment to the same extent that the land would have been if purchased: See Frederick v. Aynscombe, 1 Atk. 392.

circumstances, such a fund of a husband is liable to his wife's dower.¹

§ 1166. **Limitations on the Effects.** — Notwithstanding these very general effects of a conversion, they are not absolutely universal. The doctrine seems to be correctly formulated by saying that the effects extend only to those persons who claim or are entitled to the property under or through the instrument, or directly from or under the author of the instrument. Some of the cases definitely hold that a conversion takes place no further than is necessary for the purposes of the will or other instrument.² Two limitations appear to be well settled: one general, that the conversion does not take place as to persons whose claims or rights to the property are purely incidental, not at all connected with its devolution or transfer from the author or through the instrument;³ and the other special, depending upon considerations of public policy, that the conversion shall not be permitted to take place so as to evade the statutes of mortmain, which invalidate gifts of land to charities.⁴

¹ Sweetapple v. Bindon, 2 Vern. 536; and see *ante*, vol. 2, § 990, note 5, p. 1452.

² See Orrick v. Boehm, 49 Md. 72; Hilton v. Hilton, 2 McAr. 70.

³ Franks v. Bollans, L. R. 3 Ch. 717, 718. Where land was devised to trustees to sell and divide the proceeds among the testator's children, one of whom was a married woman, although the lady's share was converted as to her, it was held not to be converted as to her husband so as to enable him to dispose of it in the same manner in which he could dispose of her actual personal property; in other words, *as to him* it was still land. [In Wilder v. Ranney, 95 N. Y. 7, 12, it was held that real estate directed by the will to be converted could not be conveyed by one of the executors without the co-operation of the other. "It physically remained real estate, taxable as such, controllable as such, and it could only be conveyed as such, and the rules of law generally applicable to real estate remained appli-

cable to this." Where, by statutory provision, a testator is deemed to have died intestate as to any child or children not named or provided for in the will, authority conferred by the will upon the executors to sell the testator's land does not work a conversion of the interest of such child or children in the estate: Northrop v. Marquam, 16 Or. 173, 187.]

⁴ Brook v. Badley, L. R. 3 Ch. 672, 674, per Lord Cairns. A legacy payable out of the proceeds of land directed to be sold is an interest in land *within the statutes of mortmain*, and cannot, while it yet remains unpaid, be bequeathed by the legatee for charitable purposes. The decisions in some of the American states hold that the equitable conversion of partnership lands into personal property is not complete; that it is limited to the payment of partnership debts and to the settlement of the partnership affairs; and that it does not extend to the devolution of the estates of the individual partners: See Foster's Appeal, 74 Pa.

§ 1167. Conversion by Paramount Authority — Compulsory Sale of Land under Statute — Sale by Order of Court. — There is another phase of the doctrine of conversion of great importance in England, and a brief summary of the decisions may be useful under analogous circumstances in this country. This has been happily denominated conversion by paramount authority, and includes the particular instances of compulsory purchases and taking of land by railway companies, and others possessing such statutory powers, and sales of land by order of court for the purpose of settling the estates of infants and lunatics, or of partition, or of paying debts, and the like. In this aspect of the doctrine, the question to be examined is the exact converse of that which arises under the ordinary form of conversion, and which has been discussed in the foregoing paragraphs. The question then was, Is the property, although not actually converted, to be treated as converted? The question now presents itself, Is the property, although *de facto* converted, to be treated to any extent as *not* converted? The special rules which contain the answers to this question are placed in the foot-note.¹ Where land is purchased or taken under

St. 391, 397; 15 Am. Rep. 553; Estate of McAvoy, 12 Phila. 83; [also Fairchild v. Fairchild, 64 N. Y. 471; Greenwood v. Marvin, 111 N. Y. 423, 436; Lenow v. Fones, 48 Ark. 557.] The doctrine is settled in England that such conversion is complete for all purposes, and embraces the devolution of the individual partners' estates, and extends to all persons claiming under, from, or against them as a firm or individually: Forbes v. Steven, L. R. 10 Eq. 178, 188, 189; Att'y-Gen. v. Brunning, 8 H. L. Cas. 243, 265; Darby v. Darby, 3 Drew. 495, 503; Myers v. Perigal, 2 De Gex, M. & G. 599; in which Matson v. Swift, 8 Beav. 368, and Custance v. Bradshaw, 4 Hare, 315, are explained or overruled.

¹ Compulsory purchase or taking of land under statutory powers. The mere notice of an intention to take the land prescribed by statute, given to

the owner in fee by a railway company or other persons having the compulsory power, does not, of itself, effect a conversion: Haynes v. Haynes, 1 Drew. & S. 426; In re Battersea Park, 9 Jur., N. S., 883. But as soon as the purchase price is agreed upon in a voluntary negotiation for a purchase with the owner *sui juris*, a conversion takes place, although the price is not yet paid; the owner's interest is personal estate; for him the land becomes money: Ex parte Hawkins, 13 Sim. 569; In re Manchester etc. R'y, 19 Beav. 365; Regent's Canal Co. v. Ware, 23 Beav. 575; Righton v. Righton, 36 L. J. Ch. 61; In re Skeggs, 2 De Gex, J. & S. 533. Where land has been taken, not by voluntary negotiation, but by the compulsory proceedings authorized by statute, and the money is paid into court, it continues to be real estate until it is taken out by some person having a right to elect

compulsory powers conferred by statute, and the owner is *sui juris*, a conversion is effected; the purchase-money, although not yet actually paid, becomes to all intents personal property; but if the owner is an infant or a lunatic, or the land is in settlement, the purchase-money remains land; there is no conversion. Where land is sold by order of the court for any purpose, it is a fixed principle, upon which the court always proceeds, that the character of the property should be changed only so far as may be necessary to accomplish the particular purpose.¹ The court *may* control the acts of trustees and direct a conversion, where there is only a mere *power* of sale in the instrument.²

to treat it as money, — that is, by some person *sui juris* who is an unfettered owner. If the owner is an infant or a lunatic, or if the land is subject to a settlement, the money necessarily retains its character as real estate: In re Stewart, 1 Smale & G. 32, 39; In re Bagot, 31 L. J. Ch. 772; Dixie v. Wright, 32 Beav. 662; In re Harrop, 3 Drew. 726; Kelland v. Fulford, L. R. 6 Ch. Div. 491; and such money will not pass by a bequest of personal property: In re Skeggs, 2 De Gex, J. & S. 533; see also, as to the effect of a statutory sale, Pleasants's Appeal, 77 Pa. St. 356; Richards v. Att'y-Gen, 6 Moore P. C. C. 381.

¹ Sale of land by order of the court. Where land is thus sold, and there is any surplus of money after satisfying the purpose for which the sale was made, such surplus is always regarded and treated as real estate: Cooke v. Dealey, 22 Beav. 196; Jermy v. Preston, 13 Sim. 356; but see Steed v. Preece, L. R. 18 Eq. 192, per Sir George Jessel; [also Hyett v. Mekin, 25 Ch. Div. 735, which holds that an absolute order for sale made within the jurisdiction of the court in an administration suit operates as a conversion from the date of the order.] *Infants' estates*: In general, a court of equity will not direct a conversion of one kind of property belonging to an infant into another kind: Ex parte Phillips, 19 Ves. 118, 122. As to the proceeds of timber ordered to be cut on an infant's estate, see Dyer v.

Dyer, 34 Beav. 504; Field v. Brown, 27 Beav. 90; if the infant is owner in fee, the proceeds are realty; if he is a life tenant, they are personalty. *Lunatics' estates*: The court will not, without sufficient cause, change the nature of a lunatic's property: Oxenden v. Lord Compton, 2 Ves. 69, 72; In re Badcock, 4 Mylne & C. 440. If lunatics' lands are sold by order of court, the surplus of the money always remains real estate: In re Wharton, 5 De Gex, M. & G. 33; In re Sloper, cited 22 Beav. 198; In re Barker, L. R. 17 Ch. Div. 241; and see Smith v. Bayright, 34 N. J. Eq. 424. The same rule prevails in sales ordered for purpose of *partition*: Foster v. Foster, L. R. 1 Ch. Div. 588; Mildmay v. Quicke, L. R. 6 Ch. Div. 553; Mordaunt v. Benwell, L. R. 19 Ch. Div. 302. [See also In re Chapin, 148 Mass. 591; Wentz's Appeal, 126 Pa. St. 541; Turner v. Dawson, 80 Va. 841.]

² Where there is thus a mere *power* of sale, the court will generally order a conversion of the property, if the intention of the testator will be the better effectuated thereby: Greenway v. Greenway, 1 Giff. 131; and the greater facility of making a division of the property, where many persons are interested, is an important circumstance in determining the action of the court: Mower v. Orr, 7 Hare, 473; Burrell v. Baskerfield, 11 Beav. 525; but where a discretion is given to the trustees, the court will not interfere to control its exercise: Shipperdson v.

§ 1168. **Conversion as between Life Tenant and Remainderman.** — Many important questions arise in the English courts as between the conflicting rights of life tenants and remaindermen, and some of the cases involving them are collected in the foot-note.¹ When the tes-

Tower, 1 Younge & C. Ch. 441; Walter v. Maunde, 19 Ves. 424; Lucas v. Brandreth, 28 Beav. 273; Yates v. Yates, 28 Beav. 637; In re Beaumont's Trusts, 32 Beav. 191.

¹ *Where the testator directs a conversion of his property*, — that is, that it be sold and the proceeds invested in a certain manner, — the questions arise, whether the life tenant is entitled to income, and if so, to what income, before the conversion is effected and the investments made. If any directions are contained in the will, they must, of course, be followed: Sparling v. Parker, 9 Beav. 524. In some cases, where the conversion cannot be made in a year after the testator's death, the life tenant is entitled to income as from that time: See Sitwell v. Bernard, 6 Ves. 520; Kilvington v. Gray, 2 Sim. & St. 396; Tucker v. Boswell, 5 Beav. 607. In some cases he is entitled to income from the testator's death: See Angerstein v. Martin, Turn. & R. 232; Hewitt v. Morris, Turn. & R. 241; Caldecott v. Caldecott, 1 Younge & C. Ch. 312; Allhusen v. Whittell, L. R. 4 Eq. 295; Brown v. Gellatly, L. R. 2 Ch. 751; La Terriere v. Bulmer, 2 Sim. 18; Wilday v. Sandys, L. R. 7 Eq. 455. Under certain circumstances the property is *considered as converted* at the end of a year from testator's death: See Douglas v. Congreve, 1 Keen, 410; Dimes v. Scott, 4 Russ. 195; Morgan v. Morgan, 14 Beav. 72, 77; Taylor v. Clark, 1 Hare, 161; Macpherson v. Macpherson, 1 Macq. 243; Brown v. Gellatly, *supra*; Robinson v. Robinson, 1 De Gex, M. & G. 247. If the property cannot be converted except at a loss, a value will be set on it, and the life tenant will receive interest on such value: See Gibson v. Bott, 7 Ves. 89; Meyer v. Simonsen, 5 De Gex & S. 723; Brown v. Gellatly, *supra*.

Where the testator does not direct any such conversion, or sale and investment of his property. — Here the principal questions are, whether a conversion

should be made, — that is, whether the property should be sold and the proceeds invested, and the interest thereon paid to the life tenant, — or whether the life tenant is to enjoy the property *in specie*. Where the personal property is given to different legatees in succession, it is generally to be converted into money, and the proceeds invested, and the interest thereon paid to the tenant or tenants for life: See Howe v. Earl of Dartmouth, 7 Ves. 137; Thornton v. Ellis, 15 Beav. 193; Mills v. Mills, 7 Sim. 501; Sutherland v. Cooke, 1 Coll. C. C. 498; Johnson v. Johnson, 2 Coll. C. C. 441; Blann v. Bell, 2 De Gex, M. & G. 775; Hood v. Clapham, 19 Beav. 90. Certain provisions or deviations in the will are held to show an intention that the life tenant is to enjoy the property *in specie*, and that it should not therefore be converted: See Crowe v. Crisford, 17 Beav. 507; Hind v. Selby, 22 Beav. 373; Cafe v. Bent, 5 Hare, 24, 36; Collins v. Collins, 2 Mylne & K. 703; Pickering v. Pickering, 4 Mylne & C. 289; Harris v. Poyner, 1 Drew. 174; Hubbard v. Young, 10 Beav. 203; Hinves v. Hinves, 3 Hare, 609; Ellis v. Eden, 23 Beav. 543; Holgate v. Jennings, 24 Beav. 623; Simpson v. Lester, 4 Jur., N. S., 1269; Burton v. Mount, 2 De Gex & S. 383; Yates v. Yates, 28 Beav. 637; Alcock v. Sloper, 2 Mylne & K. 699; Daniel v. Warren, 2 Younge & C. Ch. 290; Skirving v. Williams, 24 Beav. 275; Rowe v. Rowe, 29 Beav. 276; Green v. Britten, 1 De Gex, J. & S. 649; [Corle v. Monkhouse, 47 N. J. Eq. 73.] When specific legacies are given to one for life, and then to another absolutely, the life tenant is entitled to the income *in specie*: Vincent v. Newcombe, 1 Younge, 599; and see Phillips v. Sargent, 7 Hare, 33; Harvey v. Harvey, 5 Beav. 134; In re Beaufoy, 1 Smale & G. 20. If property is taken by a railway company, and the money is paid into court and invested, the life tenant is entitled to the same benefit

tator has directed the property to be converted — that is, to be sold and the proceeds invested — the questions generally are as to the life tenant's right to the income. When the testator has not directed such a conversion, the principal questions are as to whether a sale should be made and the proceeds invested, and the interest thereon paid to the life tenant, or whether he is entitled to enjoy the property *in specie* without any conversion.

SECTION II.

RESULTING TRUST UPON A FAILURE OF THE PURPOSES OF THE CONVERSION.

ANALYSIS.

- § 1169. The questions stated; object and extent of the doctrine.
- § 1170. A total failure of the purpose.
- § 1171. Partial failure; wills directing conversion of land into money.
- § 1172. The same; wills directing the conversion of money into land.
- § 1173. The same; deeds directing the conversion of land into money.
- § 1174. The same; deeds directing the conversion of money into land.

§ 1169. **The Questions Stated — Object and Extent of the Doctrine.** — The purposes for which a conversion is directed might be unlawful, or circumstances might arise after the execution of the instrument which rendered the conversion unnecessary. In other words, the purposes of a conversion might fail totally or partially, either before the instrument had come into operation, or after the conversion had been *de facto* made by a sale of the land or by a laying out of the money in land. The questions would then arise, To whom will the property — the entire amount in one case, the portion undisposed of in the other — then result, — the author of the trust, his heir, or his personal representatives? and in what form will it thus result, — in

as if the property had not been taken: *Pfleger*, L. R. 6 Eq. 426; *In re Chamberlain*, cited L. R. 6 Eq. 427; *Little-re Phillips*, L. R. 6 Eq. 250; *In re wood v. Pattison*, 10 Jur., N. S., 875.

its original or in its converted form, as real or as personal estate?¹ The case of a total failure is simple; that of a partial failure presents questions of greater difficulty; and in discussing this branch of the subject it will be expedient to consider separately cases arising under wills, and those arising under deeds of settlement and other instruments *inter vivos*.

§ 1170. **A Total Failure.**—Where a conversion of land into money or of money into land is directed, either by a will or by an instrument *inter vivos*, and the purposes and objects for which such conversion was intended totally fail before the directions for a conversion are carried into effect, the property thus directed to be converted will remain in its original condition; it will result in its original unchanged form to the heirs or to the personal representatives of the testator, and to the settlor, or to his heirs or his personal representatives, as the case may be. If land is to be sold and converted into money, the property results as real estate to the heirs; if money is to be laid out

¹ All the fundamental questions involved in this discussion may be exhibited by a very simple case. A will devises all of the testator's real estate to trustees, upon trust, to sell the same and divide the proceeds equally between A and B, who are strangers, so that a lapse would be possible. If both A and B should die during the testator's lifetime, the object of the conversion would totally fail; there would be a lapse; no necessity would exist for converting the land into money by a sale; the land would remain entirely undisposed of; and by the well-settled doctrine of resulting trusts, it would result to the testator's heir. It should be observed, however, that under modern statutes it *might* result to the residuary devisee. If one only should die, say A, the purpose of the conversion would only partially fail; there would still remain the necessity of converting the whole land into money by a sale so as to pay to B his share of the proceeds, and the other half only would remain undisposed of, but in the

actual condition of money. The question must arise, To what extent is the trust for a conversion still in force? Who is to benefit by the lapse,—the heir or the personal representatives of the testator? And in what character will either of them take the undisposed of surplus,—as real or personal estate? If any case, however complicated, is stripped of its incidental and unessential circumstances, the really important questions involved will be reduced to these three. From the great number, variety, and complication of trusts in wills and settlements so common in England, many subordinate questions have arisen before the English courts, generally depending upon the particular provisions of the instrument; and the decisions involving such questions are numerous. As these questions do not arise, and many of them could not arise, before our American tribunals, any detailed discussion of them is plainly unnecessary, and I shall simply refer to the more important cases of this kind in the foot-notes.

in land, the fund results as personal estate to the personal representatives. This rule is universal.¹

§ 1171. **Partial Failure — Wills Directing Conversion of Land into Money.** — Where the purpose for converting land into money directed by a will wholly fails, it has been shown that the land results to the heir. Where the purpose only partially fails, the conversion must still be made by selling the land, in order to satisfy the purposes which remain effective. With respect to the surplus which is left after satisfying those purposes, the intention was shown by the testator to deprive the heir of it *for a particular object only*, and that object having failed, there is no reason which can be inferred from this disposition why it should not belong to the heir. In the absence of a contrary intent appearing from other provisions of the will, the undisposed of portion or surplus will therefore result to the heir. Since the conversion has, however, actually taken place, this surplus results to the heir as personal property, and not as real estate. The rule may be thus formulated: Wherever it is necessary to sell the land for

¹ Ackroyd v. Smithson, 1 Brown Ch. 503; 1 Lead. Cas. Eq., 4th Am. ed., 1171, 1181, 1197; Clarke v. Franklin, 4 Kay & J. 257; Smith v. Claxton, 4 Madd. 484, 492; Ripley v. Waterworth, 7 Ves. 425, 435; Chitty v. Parker, 2 Ves. 271; Wilson v. Major, 11 Ves. 205; Edwards v. Tuck, 23 Beav. 268; McCarty v. Deming, 4 Lans. 440, 443; Giraud v. Giraud, 58 How. Pr. 175; Slocum v. Slocum, 4 Edw. Ch. 613; Davis's Appeal, 83 Pa. St. 348; Morrow v. Brenizer, 2 Rawle, 184; Commonwealth v. Martin's Ex'rs, 5 Munf. 117; Smith v. McCrary, 3 Ired. Eq. 204; but see Evans's Appeal, 63 Pa. St. 183. The general subject of a resulting trust upon a total or a partial failure of the purposes of the conversion is also discussed with more or less fullness in the following American cases: Craig v. Leslie, 3 Wheat. 563, 582; Holland v. Cruft, 3 Gray, 162, 180; Wood v. Conc, 7 Paige, 471, 476; Wood v. Keyes, 8 Paige, 365, 369; Hawley v. James, 5 Paige, 318, 323, 486; Arnold v. Gilbert, 3 Sand. Ch.

531, 556; Arnold v. Gilbert, 5 Barb. 190, 195; Bogert v. Hertell, 4 Hill, 492, 495, 500; Wright v. Trustees etc., Hoff. Ch. 202, 205, 219; Marsh v. Wheeler, 2 Edw. Ch. 156, 160; Pennell's Appeal, 20 Pa. St. 515; Nagle's Appeal, 13 Pa. St. 260-264; Burr v. Sim, 1 Whart. 252, 262; 29 Am. Dec. 48; Pratt v. Taliaferro, 3 Leigh, 419, 423; Lindsay v. Pleasants, 4 Ired. Eq. 320, 323; Proctor v. Ferebee, 1 Ired. Eq. 143, 146; 36 Am. Dec. 34; Newby v. Skinner, 1 Dev. & B. Eq. 488; 31 Am. Dec. 397; North v. Valk, Dud. Eq. 212, 216. [See also Parker v. Linden, 113 N. Y. 28; Read v. Williams, 125 N. Y. 560; 21 Am. St. Rep. 748; Sweeney v. Warren, 127 N. Y. 426; Roy v. Monroe, 47 N. J. Eq. 356; Rizer v. Perry, 58 Md. 112.] It should be remembered that modern statutes have quite generally placed the residuary devisee in the same position as a residuary legatee; and therefore, in case of a will directing land to be sold, the land might result to the residuary devisee instead of the heir.

purposes directed by a will which are effective, and the proceeds of the sale are only partially disposed of for such purposes, unless the will in some other provision shows a contrary intention, then the remaining portion or surplus results to the heir of the testator as money, and in case of *his* death, will go to his personal representatives even though the sale did not take place until his death.¹

¹ The main branch of this rule, that the surplus results to the heir, was settled by the great case of *Ackroyd v. Smithson*, 1 Brown Ch. 503; 1 Lead. Cas. Eq., 4th Am. ed., 1171, 1181, 1197. The other branch, as to the form in which it results, was first decided by *Smith v. Claxton*, 4 Madd. 484; see also *Wright v. Wright*, 16 Ves. 188; *Jessopp v. Watson*, 1 Mylne & K. 665; *Hatfield v. Pryme*, 2 Coll. C. C. 204; *Collins v. Wakeman*, 2 Ves. 683; *Watson v. Hayes*, 5 Mylne & C. 125; *Jones v. Mitchell*, 1 Sim. & St. 290, 294; *Buchanan v. Harrison*, 1 Johns. & H. 662; *Fitch v. Weber*, 6 Hare, 145; *Taylor v. Taylor*, 3 De Gex, M. & G. 190; *Wall v. Colshead*, 2 De Gex & J. 683; *Spencer v. Wilson*, L. R. 16 Eq. 501; *McCarty v. Deming*, 4 Lans. 440, 442; *Wood v. Cone*, 7 Paige, 471; *Wright v. Trustees etc.*, Hoff. Ch. 202; *Lindsay v. Pleasants*, 4 Ired. Eq. 320; *Newby v. Skinner*, 1 Dev. & B. Eq. 488; 31 Am. Dec. 397; *North v. Valk*, Dud. Eq. 212; *Craig v. Leslie*, 3 Wheat. 563.

In *Steed v. Preece*, L. R. 18 Eq. 192, *Jessel, M. R.*, held that this rule did not apply where a sale of land had been made by order of court, but the surplus of the proceeds went to the personal representatives as personal estate. This rule is, however, directly opposed to other authorities, and it seems best to preserve the symmetry of the doctrine without arbitrary exceptions.

The English decisions are very strong in favor of the heir. The foregoing cases show that nothing less than an express *gift* of the undisposed surplus—not even a declaration that nothing shall result, or that the heir shall not take—will prevent it from resulting under the rule stated in the text. Even when by the directions of the will the proceeds of the realty and of the personal property are blended

together into one common fund, this does not render the entire mass personal property so as to change the mode of devolution. The two kinds of proceeds are still separated, and the rule of the text is applied to that portion of the fund which comes from the sale of the land; it results to the heir: See *Ackroyd v. Smithson*, *supra*; *Taylor v. Taylor*, *supra*; *Jessopp v. Watson*, 1 Mylne & K. 665; *Cruse v. Barley*, 3 P. Wms. 20, 22, note by Mr. Cox; *Edwards v. Tuck*, 23 Beav. 268; *Wall v. Colshead*, 2 De Gex & J. 683; *Bective v. Hodgson*, 10 H. L. Cas. 656; *Amphlett v. Parke*, 2 Russ. & M. 221; *Robinson v. Governors of London Hospital*, 10 Hare, 19; *Barrs v. Fewkes*, 2 Hem. & M. 60; 11 Jur., N. S., 669; *Spencer v. Wilson*, L. R. 16 Eq. 501. But the tendency of some at least of the American cases is not so strongly in favor of the heir; an intention on the part of the testator to effect a complete conversion into personalty as between the heir and the personal representatives, next of kin, or residuary legatees is more readily and easily inferred. Thus it has been held that a direction to blend the proceeds of the realty and personalty into one common fund for the purposes of the will, even though not in pursuance of the English view “for all intents and purposes,” will render the conversion of the whole complete, and will change the devolution of the undisposed surplus, when some of the purposes of the conversion failed: See especially *Craig v. Leslie*, 3 Wheat. 563; also *Morrow v. Brenizer*, 2 Rawle, 185; *Burr v. Sim*, 1 Whart. 252; 29 Am. Dec. 48. Even in England the *residuary* bequest may interfere with the operation of the general rule, and may cause the undisposed of surplus to devolve upon the residuary legatee instead of the heir, when there is a partial failure of the purpose of the

§ 1172. **The Same. Wills Directing the Conversion of Money into Land.** — Where a will directs that money shall be laid out in land, and the purpose of the conversion wholly fails, the fund, as has been shown, results to the personal representatives of the testator in its original form. Where the failure of the purpose is but partial, the same rule controls the devolution. It is settled, by analogy with the foregoing case of real estate trusts, that the undisposed of portion or surplus of the fund results to the personal representatives of the testator for his next of kin or residuary legatee, as the case may be; and that it thus devolves in its original unconverted form as personal property; for it could go to the executor as assets in no other form.¹

§ 1173. **The Same. Deeds Directing a Conversion of Land into Money.** — Where a deed, settlement, or other instrument *inter vivos* directs land to be sold and converted into money, and the purposes thereof wholly fail, then, as in case of a will, the land results unconverted as real estate to the settlor or to his heir.² Where the failure of the purpose is only partial, the analogy to the case of a

conversion. Where the land has been directed to be sold, and out of the proceeds thereof and the personal estate combined debts and legacies are to be paid, and the whole of the surplus consisting of the proceeds of the realty and of the personalty blended is given in the *residuary* bequest as personal property, then the proceeds of the land thus bequeathed will be personal estate, and will go to the residuary legatee, and not to the heir: See *Mallabar v. Mallabar*, Cas. t. Talb. 78; *Hutcheson v. Hammond*, 3 Brown Ch. 128, 148; *Durour v. Motteux*, 1 Ves. Sr. 320; 3 P.Wms. 22, note 1; *Kennell v. Abbott*, 4 Ves. 802; *Byam v. Munton*, 1 Russ. & M. 503; *Green v. Jackson*, 2 Russ. & M. 238; *Wildes v. Davies*, 1 Smale & G. 475, 482; *Salt v. Chattaway*, 3 Beav. 576, per Lord Langdale.

It is for this reason that I have inserted the modification "in the absence of a contrary intention shown by the testator" in formulating the

general rule. The rule is ordinarily stated by text-writers in a more general manner, but such a limitation seems to be necessary to its perfect accuracy.

¹ *Cogan v. Stephens*, 1 Beav. 482, note; 5 L. J., N. S. Ch. 17; *Reynolds v. Godlee*, Johns. 536, 582; *Hereford v. Ravenhill*, 1 Beav. 481; 5 Beav. 51; *Hawley v. James*, 5 Paige, 318; [*Phillips v. Ferguson*, 85 Va. 509; 17 Am. St. Rep. 78.]

Where personal property is bequeathed upon trust for conversion into land to be held upon trusts which ultimately fail, it has recently been held that land purchased before such failure goes to the next of kin *as real estate*, and passes as such to the real representatives — heirs or devisees — of such next of kin, overruling *Reynolds v. Godlee*, *supra*, upon this point: *Curteis v. Wormald*, L. R. 10 Ch. Div. 172.

² See *ante*, § 1171.

will is not perfect; the difference arises from the time at which a conversion takes place. According to the well-settled rule, the equitable conversion takes place at the date of the instrument, although the actual sale is postponed. The author of the instrument takes the undisposed of surplus converted in his lifetime as personal property; it forms a part of his general personal estate, and must devolve as such.¹

§ 1174. **The Same. Deeds Directing the Conversion of Money into Land.** — If a deed directs money to be laid out in land, and the purposes of the conversion totally fail, clearly the fund results to the author of the instrument or to his estate as personal property. If the purposes partially fail, the trust for conversion must still be carried out, and the portion then undisposed of will result to the author or his heir as land.²

¹ *Clarke v. Franklin*, 4 Kay & J. 257; *Hewitt v. Wright*, 1 Brown Ch. 86; *In re Newberry's Trusts*, L. R. 5 Ch. Div. 746; and see *Van v. Barnett*, 19 Ves. 102. In *Clarke v. Franklin*, there was a conveyance by deed upon trust, first for the settlor during his life, then upon trusts, first to sell, then out of the proceeds to pay certain sums, which were valid trusts, and all the remaining trusts were for charity and invalid. The effect of the deed was, that immediately upon its execution the whole property was impressed with a valid trust for conversion; in other words, an equitable conversion of the land into personalty at once took place, and at the same time a resulting trust arose in favor of the settlor as to that portion of this personalty which was invalidly given to charity.

² *Lechmere v. Lechmere*, Cas. t. Talb. 80; *Pulteney v. Earl of Darlington*, 1 Brown Ch. 223. As an illustration, a man, by marriage settlement, covenants to pay a certain sum to trustees, to be laid out in land, to be settled

to the use of himself for life, remainder to the use of his wife for life, remainder to the children of the marriage, remainder to his own right heirs. If his wife should die in his lifetime without issue, all the uses in the land, except for the benefit of the settlor himself, would be gone. The purposes of the trust for conversion would have utterly failed. There would be no obligation on the settlor to pay it out, and no room for the application of the maxim that equity considers that as done which ought to be done. In the language used by English courts, the money would be "at home in the settlor's pocket." If, on the other hand, the wife should survive the settlor, no matter for how short a time, but without issue, then the trust would not have wholly failed; there would be an obligation to pay the money to be laid out in land; the maxim would apply, and equity would, at the suit of the settlor's heir, compel the money to be laid out in land for him or to be paid over to him.

SECTION III.

RECONVERSION.

ANALYSIS.

- § 1175. Definition: *Rationale* of the doctrine.
- § 1176. Who may elect to have a reconversion.
- § 1177. Mode of election.
- § 1178. Double conversion.

§ 1175. **Definition—Rationale of the Doctrine.**—By reconversion is meant “that notional or imaginary process by which a prior *constructive* conversion is annulled and taken away, and the *constructively* converted property is restored, in contemplation of a court of equity, to its original actual quality.”¹ Thus real estate is devised upon trust to sell and to pay the proceeds to A. By virtue of this absolute direction, the land is, in equity, converted into personal estate; it belongs to A as personalty. It may, however, be made A’s property as real estate; that is, A may prefer to receive it in its original unconverted form as land. In that event it is said to be reconverted, and the process is called reconversion. The *rationale* of this doctrine is clearly found in the right which every absolute owner or donee has to dispense with or forbid the execution of any trust in the performance of which he alone is interested. Reconversion is the result of an election expressly made or inferred by a court of equity. It depends wholly upon the right of election held by the person entitled to the property to choose whether he will take the property in its converted condition or in its original and unconverted form. The whole discussion consists of answers to the questions, Who may thus elect? and how may such an election be made?²

¹ Haynes’s Outlines of Equity, 367.

² Some writers have described reconversion as being of two kinds: 1. By voluntary act of the party, — an election; 2. By act of law. This is an

erroneous conception. The so-called reconversion by act of the law is simply an instance where, under special circumstances, the party’s election is inferred or presumed. It depends

§ 1176. **Who may Elect to have a Reconversion.** — As to personal capacities, the party, in order to elect, must be *sui juris*, or at least must not be subject to any incapacity which prevents him from effectively dealing with his own property.¹ With regard to the nature and quantity of interest which must be owned in order that the party may effect a reconversion, if he is entitled to the whole *absolute interest in possession*, either to the land to be sold for money, or to the money to be laid out in land, then he may, of course, elect, since his election could affect no other person's rights. If he owns, not the whole subject-matter, but only an undivided share or a partial interest, the general rule is settled that he may elect, and can only elect, when such election could not by possibility injuriously affect the rights and interests of those who are associated with him in the total ownership as co-owners, life tenants, remaindermen, reversioners, and the like.²

upon the notion of his voluntary election as much as any other instance. The subject of reconversion is one of great importance and interest in England; the cases involving it are numerous, and many of the questions are difficult. Although the doctrine *theoretically* belongs to our jurisprudence, it can hardly be said to have any *practical* existence in the law of many of the states; it has very rarely come before any of the American courts, and then in its simplest form. I shall attempt, therefore, to give no more than a bare outline of the doctrine, but shall cite cases sufficient in number and importance to enable the reader to pursue a more thorough and detailed examination.

¹ A person absolutely entitled and *sui juris*: *Benson v. Benson*, 1 P. Wms. 130; *Sisson v. Giles*, 32 L. J., N. S., (Ch.) 606; 3 De Gex, J. & S. 614; *Prentice v. Janssen*, 79 N. Y. 478.

Infants cannot elect, but the court may, for their advantage: See *Seeley v. Jago*, 1 P. Wms. 389; *Carr v. Ellison*, 2 Brown Ch. 56; *Van v. Barnett*, 19 Ves. 102; *Robinson v. Robinson*, 19 Beav. 494; *In re Harrop*, 3 Drew. 726, 734; [*Carr v. Branch*, 85 Va. 597; *Swann v. Garrett*, 71 Ga. 566.]

Lunatics cannot: *Ashby v. Palmer*, 1 Mer. 296; *In re Wharton*, 5 De Gex, M. & G. 33; *In re Barker*, L. R. 17 Ch. Div. 241.

Married women. — Under the former law they could only elect by means of a fine, or by a consent in open court: *Oldham v. Hughes*, 2 Atk. 452, 453; *Binford v. Bawden*, 1 Ves. 512; 2 Ves. 38; *Frank v. Frank*, 3 Mylne & C. 171; *May v. Roper*, 4 Sim. 360; *Standerling v. Hall*, L. R. 11 Ch. Div. 652; *Wallace v. Greenwood*, L. R. 16 Ch. Div. 362. Under the statute 3 & 4 Wm. IV., c. 74, sec. 77, a wife may elect by means of a deed in which her husband joins, and which is properly acknowledged by her: *Briggs v. Chamberlain*, 11 Hare, 69; *Bowyer v. Woodman*, L. R. 3 Eq. 313; *Tuer v. Turner*, 20 Beav. 560; *Forbes v. Adams*, 9 Sim. 462. A deed by husband and wife, not so acknowledged, or by either alone, would be insufficient: *Sisson v. Giles*, 32 L. J., N. S. Ch. 606; 3 De Gex, J. & S. 614; *Franks v. Bollans*, L. R. 3 Ch. 717. In this country a married woman can doubtless elect by means of any instrument sufficient to enable her to convey real estate.

² The general question whether such a partial owner may elect to reconvert

§ 1177. **Mode of Election.**—It being assumed that the party entitled to the property has the capacity to elect to receive it in its unconverted form, and thus to effect a reconversion, the further question remains, how such election must or may be made. An express declaration of the intention in language is always sufficient, but is not necessary.¹ An election may be inferred from acts or writings. Any act or writing which shows an unequivocal intention to possess the property in its actual state and condition will amount to a valid election.²

must be answered somewhat differently when the subject-matter consists of land to be turned into money, and when it consists of money to be laid out in land. A *co-owner*: When the direction is to turn land into money, one co-owner *cannot elect to keep his share in land*. The others are entitled to have their shares sold so as to receive the money, and plainly the sale of an undivided share of the land would produce a comparatively less amount than would result from a sale of the whole: *Holloway v. Radcliffe*, 23 Beav. 163; *Deeth v. Hale*, 2 Molloy, 317; *Fletcher v. Ashburner*, 1 Brown Ch. 497, 500. On the contrary, when the direction is to lay out money in land for co-owners, one co-owner can elect to take his share in money; for this would plainly produce no injury to the others: *Seeley v. Jago*, 1 P. Wms. 389; and see *Elliott v. Fisher*, 12 Sim. 505. *Remaindermen* and other holders of future interests: The earlier cases seem to admit or assume that a remainderman may elect, but not so as to affect the interests of the owners of the prior estates. The recent decisions tend to a denial of any power in the remainderman to make an *absolute* election as against the life tenants and other prior owners. All the decisions admit that he may make an election binding upon his own real and personal representatives, whether the property shall devolve to one or the other of them as real or as personal estate: *Triquet v. Thornton*, 13 Ves. 345; *Gillies v. Longlands*, 4 De Gex & S. 372, 379; *Sisson v. Giles*, 32 L. J., N. S. Ch. 606; 3 De Gex, J. & S. 614; *Meek v. Devenish*, L. R. 6 Ch. Div. 566; *Walrond v. Rosslyn*, L. R.

11 Ch. Div. 640; *Cookson v. Cookson*, 12 Clark & F. 121; *Prentice v. Janssen*, 79 N. Y. 478.

¹ *Pulteney v. Earl of Darlington*, 1 Brown Ch. 223, 236, 237; *Wheldale v. Partridge*, 8 Ves. 226, 236; *Van v. Barnett*, 19 Ves. 102, 109; *Bradish v. Gee*, Amb. 229.

² The intention shown by the act need not be *to reconvert*; an intention *to take the property in its actual condition* is enough: *Harcourt v. Seymour*, 2 Sim., N. S., 12, 46; *Cookson v. Cookson*, 12 Clark & F. 121, 146; *Biddulph v. Biddulph*, 12 Ves. 161 (by a will); *Prentice v. Janssen*, 79 N. Y. 478; *Beatty v. Byers*, 18 Pa. St. 105.

Particular acts, where land was directed to be sold, etc.: Entry on the land and receiving rents and profits: *In re Gordon*, L. R. 6 Ch. Div. 531; *Kirkman v. Miles*, 13 Ves. 338; [but for circumstances under which continued receipt of rents is no evidence of such intention, see *Foxwell v. Lewis*, 30 Ch. Div. 656.] Granting leases: *Crabtree v. Bramble*, 3 Atk. 680; *Mutlow v. Bigg*, L. R. 1 Ch. Div. 385. Retaining the land unsold a long time: *Dixon v. Gayfere*, 17 Beav. 433; *Griesbach v. Fremantle*, 17 Beav. 314; but see *Kirkman v. Miles*, *supra*. Acts showing that the trust is at an end: *Davies v. Ashford*, 15 Sim. 42; *Sharp v. St. Sauveur*, L. R. 7 Ch. 343; *In re Davidson*, L. R. 11 Ch. Div. 341. Money directed to be laid out in land; actually receiving the money or securities, and other similar acts: *Cookson v. Cookson*, 12 Clark & F. 121, 147; *Harcourt v. Seymour*, 2 Sim., N. S., 12; *Trafford v. Boehm*, 3 Atk. 440; *Rook v. Worth*, 1 Ves. Sr. 460, 461; *In re Pedder*,

§ 1178. **Double Conversion.**—Somewhat similar in its effects to a reconversion, but entirely different in its operation, is a double conversion. The one, as has been shown, operates in disregard of the direction in the will or deed; the other, in conformity with that direction, which it carries into effect. A double conversion takes place when land is directed to be sold and converted into money, and these proceeds are directed to be laid out again in land, the whole forming one continuous obligation. The property in such case is considered to be in that state in which it is ultimately to be converted,—that is, to be land.¹ Where real estate is directed to be sold and the proceeds invested in the purchase of other lands, the persons who would be interested in the latter if purchased take, in general, the same interests in the former until a sale is effected.²

5 De Gex, M. & G. 890; Gillies v. Longlands, 4 De Gex & S. 372; Lingen v. Sowray, 1 P. Wms. 172, 176.

As a particular application of the same doctrine, where money directed or agreed to be laid out in land *comes into the hands of the person* who would be absolutely entitled to the land if purchased, it is then said to be "*at home*," and it will thenceforth be considered as money, in the absence of evidence of a contrary intention, and will devolve as money. In other words, a presumption thence arises that the party intended to reconvert the property by electing to keep it as money, and thus to impress upon it the character of personal estate as be-

tween his real and his personal representatives. If, however, the money is in the hands of some third person, the absolute owner *must do some act* showing an election to take it as money. The foregoing rule constitutes the conversion "by act of the law" according to the nomenclature of some writers: See Pulteney v. Earl of Darlington, 1 Brown Ch. 223; Wheldale v. Partridge, 8 Ves. 226, 235; Chichester v. Bickerstaff, 2 Vern. 295; In re Pedder, 5 De Gex, M. & G. 890.

¹ Pearson v. Lane, 17 Ves. 101; In re Pedder, 5 De Gex, M. & G. 890; White v. Howard, 46 N. Y. 144.

² Pearson v. Lane, 17 Ves. 101.

CHAPTER FIFTH.

MORTGAGES OF LAND.

SECTION I.

THE ORIGINAL OR ENGLISH DOCTRINE.

ANALYSIS.

- § 1179. The common-law doctrine: Statute of 7 Geo. II., c. 20.
- § 1180. Origin and development of the equity jurisdiction; the "equity of redemption."
- § 1181. The equitable theory.
- § 1182. The double system at law and in equity.
- § 1183. The legal and the equitable remedies.
- § 1184. Peculiarities of the English system.
- § 1185. Subsequent mortgages equitable, not legal.

§ 1179. **The Common-law Doctrine.**—In no other department has the equity jurisprudence as administered in this country departed so widely from that administered in England as in the department which is concerned with mortgages, and the respective rights, liabilities, and remedies of the mortgagor and the mortgagee. No correct notion can be obtained of equity as it now exists within the United States without an accurate and full appreciation of these differences.¹ At the common

¹ The subject of mortgages is so large, involving such a vast mass of detail, and presents so many differing aspects in the various states of our own country, that whole treatises are required for its adequate discussion. As in the case of trusts, I shall only attempt a statement of the principles and more general doctrines which constitute its framework; for the more special rules and practical applications the reader must be referred to more elaborate works. I desire at the outset to acknowledge the great assistance which I have received from

Mr. Jones's most excellent treatise. I shall not dwell at large upon the ancient common-law dogmas, nor describe in detail the growth of the equity doctrines by which the effect of these dogmas was destroyed. It will suffice to state in general terms the two legal and equitable theories which exist simultaneously in England, and then to explain with some more fullness the modifications which have been made in the American states, and the resulting systems which form a part of our equity jurisprudence. It will be seen that little aid

law the ordinary mortgage was to all intents and purposes a conveyance of the legal estate. A mortgage in fee immediately vested the mortgagee with the legal title, subject, however, to be defeated by the mortgagor's performing the condition by paying the money upon the prescribed pay-day. If on that very day the mortgagor performed the condition by paying the money, he thereby put an end to the mortgagee's estate; the legal estate was re-vested in himself, and with it he had the right at once to re-enter upon the land, and to recover its possession by an appropriate action at law. But if the mortgagor for any reason suffered the pay-day to go by without paying or tendering the amount due, all his right was utterly and forever lost; the estate of the mortgagee, which had before been upon condition, now became absolute, with all the features and incidents of absolute legal ownership. This purely legal theory of the mortgage has continued in force in England to the present day, until the existing judicature act went into operation;¹ and during that interval it has constantly prevailed and been acted upon in the English courts of law without any modification except that introduced by a statute passed during the reign of George II.² This statute has

can be derived from the English decisions expounding the theory which prevails in that country, even in those very few states whose jurisprudence on this subject bears some resemblance to the English, while in a majority of the states the modern decisions of the English courts have no application whatever. It may be added that in all of the succeeding discussion I assume that the mortgage is in fee, which is almost invariably the fact in this country, although in England mortgages in fee are not, I believe, very common. Mortgages of long terms of years, so frequent in England, are virtually unknown with us.

¹ See this act, 36 & 37 Vict., c. 66, secs. 24, 25, *ante*, vol. 1, § 40, note 1. Since this act declares that the rules of equity shall prevail over those of

the law when conflicting, in all the courts, it seems to follow as a necessary consequence that the purely legal theory of the mortgage can no longer be enforced.

² 7 Geo. II., c. 20. This statute enacted that when an action at law was brought on the bond, or ejectment to recover possession of the land on the mortgage, the mortgagor might, pending the suit, pay to the mortgagee the debt, interest, and all costs expended in any suit at law or in equity; or in case of a refusal to accept the same, might bring such money into court where the action was pending, which moneys so paid or brought into court were declared to be a satisfaction of the mortgage, and the court was required to compel, by an order of the court, the mortgagee to assign, surrender, or recon-

always been strictly construed, and held applicable only in the cases mentioned by its express terms, where a suit at law is brought by the mortgagee.¹

§ 1180. **Origin and Development of the Equity Jurisdiction — The "Equity of Redemption."** — As this common-law doctrine, with all of its accompanying incidents, was exceedingly harsh in its operation, and often worked grievous wrong to mortgagors, equity interfered, and by degrees built up a distinct theory of mortgages which is one of the most magnificent triumphs of equity jurisprudence. The basis of this system was the fundamental maxim that equity looks at the intent, rather than the form, and the resulting general principle that equity could and should relieve against legal penalties and forfeitures, when the person in whose behalf they were enforced could be fairly and sufficiently compensated by an award of money.² As early as the reign of James I. the court of chancery had begun to relieve the mortgagor; and in the reign of Charles I. his right to redeem after a failure to perform the condition — that is, to come in and pay the debt and interest and recover the land after the pay-day — had become fully established and recognized as a part of the equity jurisprudence.³ This equitable right of the mortgagor was termed his "equity of redemption," which is simply an abbreviation of his

vey the mortgaged premises to the mortgagor. This statute has been substantially re-enacted in several of the American states: *New Jersey*: Nixon's Digest, 4th ed., 608; *Connecticut*: Gen. Stats. 1875, 471; [Gen. Stats. 1888, sec. 1054;] *Virginia*: Code 1873, c. 131, sec. 21; [Code 1887, sec. 2742.]

¹ Goodtitle v. Nottle, 11 Moore, 491; Doe v. Clifton, 4 Ad. & E. 809; *Shields v. Lozear*, 34 N. J. L. 496; 3 Am. Rep. 256; *Davis v. Teays*, 3 Gratt. 283; 1 Jones on Mortgages, sec. 9. In *Shields v. Lozear*, *supra*, Depue, J., said: "In cases strictly within the terms of this statute, the English courts of law have exercised an equitable jurisdiction to enforce a redemption on payment of the mortgage debt

after default in payment, according to the condition, by compelling a reconveyance. Except in cases within this statute, the doctrine of the English courts is in accordance with the ancient common law, that at law a failure to pay at the day prescribed forfeits the estate of the mortgagor under the condition, leaving him only an equity of redemption, which chancery will lay hold of and give effect to by compelling a reconveyance on equitable terms."

² See *ante*, vol. 1, §§ 378, 381, 382, 433, where this maxim and its effects are explained.

³ *Emanuel College v. Evans*, 1 Rep. in Ch. 18; 1 Jones on Mortgages, secs. 6, 7; Coote on Mortgages, 4th ed., 15.

"right to redeem in equity." At first this right of the mortgagor was regarded as a mere *right* or thing in action; and at the close of the reign of Charles II. the equity of redemption was said to be a *mere right* to recover the land in equity after a failure to perform the condition, and not to be an *estate in the land*.¹ This narrow view, however, was soon abandoned; the equitable theory was developed and became more consistent and complete, until, in 1737, Lord Hardwicke laid down the doctrine as already established, and which has since been regarded as the very central conception of the equitable theory that an equity of redemption is (in equity) an estate in the land which may be devised, granted, or entailed with remainders; that it cannot be considered as a mere right only, but such an estate whereof there may be a seisin; and that the person therefore entitled to the equity of redemption is considered as the owner of the land, and a mortgage in fee is considered as personal assets.²

§ 1181. **The Equitable Theory.**—While the mortgagee is still regarded at law as vested with the legal title followed by all of its incidents, the following general theory is established as a part of the equity jurisprudence. The mortgagor, both after and before a breach of the condition, is regarded as the real owner of the land subject to the lien of the mortgage, and liable to have all his estate, interest, and right finally cut off and destroyed by a foreclosure. Prior to such foreclosure, he is vested with an equitable estate in the land which has all the in-

¹ Roscarrock v. Barton, 1 Cas. in Ch. 217; 1 Jones on Mortgages, sec. 6. In this case, Lord Chief Justice Hale protested very vehemently against these encroachments of equity, and especially against any further extension of the right of redemption. He said, among other things: "By the growth of equity on equity, the heart of the common law is eaten out, and legal settlements are destroyed."

² Casborne v. Scarfe, 1 Atk. 603.

It was argued in this case that where a wife was the mortgagor, her equity of redemption was not an estate in the land so that her husband could be entitled to curtesy therein; that she was not seised, since the legal estate was vested in the mortgagee, but she only had a right of action whereby she might compel a reconveyance of the land to herself upon payment of the amount due. This narrow view was rejected by the court.

cidents of absolute ownership; it may be conveyed or devised, will descend to his heirs, may be cut up into lesser estates, and generally may be dealt with in the same manner as the absolute legal ownership, always subject, however, to the lien of the mortgage. On the other hand, the mortgage is regarded primarily as a security; the debt is the principal fact, and the mortgage is collateral thereto; the interest which it confers on the mortgagee is a *lien* on the land, and not an *estate in* the land; it is a thing in action, and may therefore be assigned and transferred without a conveyance of the land itself; it is personal assets, and on the death of the mortgagee it passes to his executors or administrators, and not to his heirs.¹

§ 1182. **The Double System at Law and in Equity.**—As these two conflicting theories have existed side by side, it follows that the rights, liabilities, and remedies of the mortgagor and the mortgagee in England have been very different when administered by the courts of law or the court of chancery. In law, the mortgagee is clothed with the entire legal estate, while the mortgagor has no estate whatever, and after a default no right except that given by the statute, mentioned in a former paragraph.² In equity, the mortgagee has no estate, but only a lien; while the mortgagor is clothed with the equitable estate called the “equity of redemption,” which is to all intents and purposes the full ownership, except that it is subject to be cut off and destroyed by a proceeding to enforce the mortgage. It should be carefully noticed that by this theory the mortgagor’s estate is wholly an equitable one; *neither in equity nor at law is he regarded as retaining the legal estate.* In law, the mortgagee is entitled to possession of the land even before the condition is broken, and may recover such possession upon his legal title, either before or after condition broken, in an action of ejectment against the mortgagor, or against any other person not

¹ 3 Washburn on Real Property, c. 16, sec. 4.

² See *ante*, sec. 1179.

having a paramount title; while the mortgagor cannot maintain ejectment for the possession even against a third person, since the legal title is outstanding in the mortgagee, and a plaintiff can recover in ejectment only upon the strength of his own legal title.¹ In equity, neither the mortgagee nor the mortgagor can maintain an action for the *mere possession*, since that remedy is wholly a legal one; but the mortgagor may maintain a suit to redeem from the mortgagee in possession, and having thus redeemed is entitled to a reconveyance and delivery of possession. In law, the mortgagee may convey the land itself by deed, or devise it by will, and on his death intestate, it will descend to his heirs. In equity, his interest is a mere thing in action assignable as such, and a deed of the land by him would operate merely as an assignment of the mortgage; and in administering the estate of a deceased mortgagee, a court of equity treats the mortgage as personal assets, to be dealt with by the executor or administrator.²

§ 1183. **The Legal and Equitable Remedies.** — The mortgagee can avail himself of both legal and equitable remedies; he may sue at law for the debt, or recover possession of the land by ejectment, or resort to the equitable remedy of foreclosure. As a matter of fact, the mortgagee, in England, ordinarily enforces his security, upon the mortgagor's default, by obtaining possession of the land and appropriating the rents and profits. This possession he acquires either by voluntary surrender from the mortgagor or by a recovery in ejectment. Having obtained the possession, he may by a suit in equity cut off and destroy the mortgagor's estate or equity of redemption by a decree for a strict foreclosure. The method

¹ The English law is strictly logical in these conclusions, but the American *legal* theory, by a curious inconsistency, rejects them. The difference between the English legal theory and the American legal theory in this respect should be carefully noted. Even in those states which have preserved the

legal and the equitable theories distinct, and which have to some extent adopted the English system, the legal theory has been more or less modified by the equity doctrines.

² 1 Washburn on Real Property, c. 16, secs. 4, pars. 10-14, 34.

of foreclosing by a decree for a sale of the premises, which so generally prevails in the United States, is very seldom adopted in England. The mortgagee having obtained possession either by voluntary surrender, by entry, or by ejectment, the mortgagor may regain his title by means of the equitable suit for a redemption, whereby the mortgagee is compelled to account for the rents and profits which he has received, the amount due to him is fixed, and on its payment the interest of the mortgagee is ended, and the mortgagor becomes entitled to a reconveyance and the possession.¹

§ 1184. **Peculiarities of the English System.** — The peculiarity of this double system should be remarked: that while equity has carefully built up its own theory, so different in all points from that prevailing at law, it has never attempted to interfere directly with the legal doctrines, nor have the law courts modified their own legal theory by voluntarily introducing equitable notions. The two theories have stood side by side, each administered by its own tribunals as though the other had no existence. Equity has so refrained from any direct invasion of the legal domain, that whenever a mortgagor has redeemed after a default, either by a payment of the debt voluntarily accepted or by means of a decree in a suit to redeem, the legal title does not thereby return to the mortgagor; having once been vested in the mortgagee, it can only be restored to the mortgagor by a legal conveyance. After a redemption of any kind, therefore, a deed from the mortgagee to the mortgagor is necessary to invest the latter with the full legal title, and a decree in a suit for redemption directs such a conveyance to be executed as the only means of restoring the mortgagor to his original legal estate.²

§ 1185. **Subsequent Mortgages Equitable.** — Another striking, but strictly logical, result of the system exists

¹ 1 Washburn on Real Property, c. 16, secs. 5, pars. 16-18.

² 1 Washburn on Real Property, c. 16, secs. 5, pars. 16-18.

when the same mortgagor, being originally the legal owner, gives successive mortgages on the same land to different persons, which are all outstanding together. If the legal owner in fee gives a first mortgage in fee to A, he thereby, as has been shown, conveys the entire legal estate, and A becomes vested with the legal title; and it is then impossible for the mortgagor to convey the legal estate to other persons by any subsequent deed or mortgage while the prior mortgage to A is outstanding, for he does not himself hold such legal estate. If, therefore, the mortgagor executes any subsequent mortgage or mortgages to B, C, D, upon the same land, these subsequent mortgagees do not thereby obtain the legal estate; they are not regarded, even by courts of law, as vested with a legal title; their estate and title are purely equitable, and such subsequent mortgages are in every sense, even in courts of law, regarded and treated as *equitable* and not legal mortgages. The same doctrine is expressed by the statement that a mortgage of the equity of redemption is necessarily an equitable mortgage.¹

¹ By the legal theory the mortgagor, having parted with his legal estate, cannot, of course, convey it by a second deed to another person, — he has at law no estate left. By the equitable theory the mortgagor's estate — his equity of redemption — is purely equitable, and a conveyance of it simply transfers this equitable estate to the grantee, while a mortgage of it is simply the mortgage of an equitable estate, and therefore itself equitable. The fact that the first mortgagee has a legal title, while the subsequent mortgagees obtain only an equitable

interest even at law, is the foundation of the English doctrine of "tacking": See *ante*, vol. 2, secs. 767-769.

By a strange inconsistency, this logical result of the legal theory is rejected by the courts of those states which have adopted the double system of law and of equity concerning mortgages; and they hold that in a series of prior and subsequent mortgages each and every mortgagee obtains the legal estate. This is one of the marked differences between the *legal* system in England and that prevailing in American states.

SECTION II.

THE AMERICAN DOCTRINE.

ANALYSIS.

- § 1186. In general: Two methods prevailing.
- § 1187. First method: Both the legal and the equitable theories; states arranged alphabetically in foot-note.
- § 1188. Second method: The equitable theory alone; states arranged in foot-note.
- § 1189. The same: The mortgagee in possession.
- § 1190. The same: Equitable remedies of the parties.
- § 1191. Definition of mortgage.

§ 1186. **In General — Two Methods Prevailing.** — The English system, with the two theories, legal and equitable, standing so opposed to each other in every point, and each complete in itself, has not been wholly adopted in any of our states. The equitable principles have penetrated the legal theory, and more or less modified it in every state. The result is, that even in those states which preserve the legal theory at all, and regard the mortgage as in any sense conveying a legal estate, many of the incidents of such legal title are abandoned; the mortgagee is the legal owner only for certain purposes and to a certain extent, — the legal owner as between himself and the mortgagor, — clothed with the legal title only so far as is considered necessary to preserve the mortgage as a valid security; while for all other purposes, and as against all other persons not claiming under or through the mortgagee, the mortgagor is regarded, even at law, as retaining the legal estate with all of its incidents and qualities.¹ The courts and legislatures of nearly one half

¹ See *Glass v. Ellison*, 9 N. H. 69; *Barnard v. Eaton*, 2 Cush. 294, 304; *Conard v. Atlantic etc. Co.*, 1 Pet. 386, 441; *Evans v. Merriken*, 8 Gill & J. 39, 47; *Clark v. Reyburn*, 1 Kan. 281; *Timms v. Shannon*, 19 Md. 296; 81 Am. Dec. 632. This conception of the mortgage is undoubtedly illogical and anomalous, a hybrid union of legal and equitable doctrines, and even more confusing than the sharply defined double system of the English jurisprudence. Such a result necessarily follows from the action of courts in admitting equitable principles to be blended with the legal dogmas, but

of the states have taken a further step, and by adopting the equitable theory alone have completely reversed the positions occupied by the mortgagor and the mortgagee under the English system. In the jurisprudence of the various states and territories of this country, two differing conceptions of the total nature and effect of mortgages now exist, — two distinct modes of regarding and regulating the rights, liabilities, and remedies of the parties. These two methods must be separately described, and the states adopting them must be arranged in two corresponding classes.

§ 1187. **First Method — Both the Legal and the Equitable Theories.** — The essential feature of this system, adopted by the courts of all the states in which the system prevails, is the doctrine that as between the mortgagor and the mortgagee, the mortgagee acquires and holds the legal estate *at law*, while the estate of the mortgagor — his equity of redemption — is entirely an equitable estate. To this extent the system agrees with that prevailing in the English courts; but this agreement is only partial.¹ In all the states which have adopted the method,

without accepting those principles in all their length and breadth, and abandoning wholly the legal theory maintained by the English courts of law. This last step, when taken, produces a system single, uniform, consistent, and just.

¹I complete the general description of the text by adding a brief statement of the special and incidental doctrines adopted in each of the states which have followed this type. The reader will thus be enabled to compare the exact system of his own state with those prevailing in other commonwealths, and to determine how far the decisions in other states agree with the methods pursued by the courts of his own, and how far they may therefore be regarded as having authority.

Alabama. — The legal estate of the mortgagee and the equitable interest of the mortgagor are preserved very distinct. As against the mortgagor, the mortgagee is entitled to posses-

sion; but as against all other persons but the mortgagee and those holding under him, the mortgagor is the owner, and entitled to possession: *Knox v. Easton*, 38 Ala. 345; *Welsh v. Phillips*, 54 Ala. 309; 25 Am. Rep. 679. [See also *Cotton v. Carlisle*, 85 Ala. 175; 7 Am. St. Rep. 29, and note.] The mortgage conveys the legal estate, and the mortgagee is entitled to immediate possession, unless the mortgage itself shows that the mortgagor may retain possession: *Knox v. Easton*; *Doe v. McLoskey*, 1 Ala. 708. After default, the mortgagee's legal estate is absolute, his right to possession complete, and the mortgagor's only interest is equitable: *Paulling v. Barron*, 32 Ala. 9; *Barker v. Bell*, 37 Ala. 354. After default, it seems doubtful whether the mortgagor can regain the legal estate by mere payment, without a reconveyance from the mortgagee: *Barker v. Bell*; *Powell v. Williams*, 14 Ala. 476; 48 Am. Dec. 105. [But

the mortgagor *while in possession* is considered, at law as well as in equity, both after and before a breach of the

this doubt is now resolved in favor of the mortgagor by statute: See *Farris v. McCurdy*, 78 Ala. 250.]

Arkansas. — The legal estate passes to the mortgagee, and he is entitled to possession at once, unless the mortgage itself shows a contrary intent, but he is certainly entitled to possession upon a default by the mortgagor: *Kannady v. McCarron*, 18 Ark. 166; *Terry v. Rosell*, 32 Ark. 478. The mortgagee may recover possession by ejectment, and upon the mortgagor's default may sue at law for the debt, and in ejectment to recover possession of the land, and in equity for a foreclosure and sale, pursuing all or any of these remedies at the same time: *Fitzgerald v. Beebe*, 7 Ark. 310; 46 Am. Dec. 285; *Gilechrist v. Patterson*, 18 Ark. 575; *Reynolds v. Canal etc. Co.*, 30 Ark. 520. [See *Chollar v. Temple*, 39 Ark. 238.]

Connecticut. — The mortgagee acquires the legal estate in a modified and partial sense; that is, as against the mortgagor, and for the purpose of preserving his security, and by virtue of this estate, he may obtain possession by ejectment: *Rockwell v. Bradley*, 2 Conn. 1, 5; *Beach v. Clark*, 6 Conn. 354; *Chamberlain v. Thompson*, 10 Conn. 243, 251; 26 Am. Dec. 399; *Middletown Sav. Bank v. Bates*, 11 Conn. 519, 523. Against all persons except the mortgagee and his assigns, the mortgagor is the owner; his estate is against the mortgagee is purely equitable, but as against others it is to all intents the legal ownership with all its incidents and qualities: *Ibid*. While the mortgagor is in possession, he is so far treated as possessing a legal right that he may maintain trespass against the mortgagee; but the mortgagee's estate is so much a legal one, that after a default the mortgagor's only right is in equity, and his only remedy is equitable, — a suit to redeem: *Chamberlain v. Thompson*, *supra*. If the mortgage is paid after a default, it is no longer an encumbrance, but may be a cloud upon the mortgagor's title; which implies that payment under such circumstances does not *ipso facto* revest the mortgagor with the full legal estate: *Gris-*

wold v. Mather, 5 Conn. 435, 440; *Doton v. Russell*, 17 Conn. 146, 154; *Town of Clinton v. Town of Westbrook*, 38 Conn. 9; *New Haven etc. Bank v. McPartlan*, 40 Conn. 90; and in such a case, if the mortgagee retains the legal title, he holds it as a trustee for the mortgagor: *Dudley v. Cadwell*, 19 Conn. 218, 227; *Cross v. Robinson*, 21 Conn. 379, 387.

Delaware. — The theory of this state is peculiar, and except for one feature of it, the state should be placed in the second class. Prior to any default of the mortgagor, the legal title remains in him; the mortgagee has only a lien, and is not entitled to possession either in law or in equity. But after the mortgagor makes default and the mortgagee obtains possession, the legal title vests in the latter, and he can hold such possession against the mortgagor, who is then thrown upon his equitable remedy of redemption: *Doe v. Tunnell*, 1 Houst. 320. [See also *Fox v. Wharton*, 5 Del. Ch. 200.] It seems, however, that upon a breach of the condition the mortgagee may recover possession from the mortgagor in ejectment, and this is the single feature which ranges the state in the first class. It is held that after default the mortgagee may pursue *all the remedies* which the law gives, and this seems to include ejectment, *sed quære*: *Newbold v. Newbold*, 1 Del. Ch. 310. As against all persons but the mortgagee and his assigns, the mortgagor is the true and legal owner: *Cooch's Lessee v. Gerry*, 3 Harr. (Del.) 280.

Illinois. — The legal and equitable theories are maintained in this state with great distinctness. The mortgagee acquires such a legal estate as against the mortgagor that he can recover the possession at once, unless the mortgage itself provides for possession to be retained by the mortgagor; and upon default in any payment he is always entitled to possession: *Delahay v. Clement*, 3 Scam. 201; *Vausant v. Allmon*, 23 Ill. 30; *Carroll v. Ballance*, 26 Ill. 9; 79 Am. Dec. 354; *Nelson v. Pingar*, 30 Ill. 473; *Jackson v. Warren*, 32 Ill. 331; *Pollock v. Maison*, 41 Ill. 516; *Harper*

condition, to be the legal owner as against all persons except the mortgagee and those claiming under him; and

v. Ely, 70 Ill. 581. [See also *Taylor v. Adams*, 115 Ill. 570; and especially *Barrett v. Hinckley*, 124 Ill. 32; 7 Am. St. Rep. 331.] Against all persons except the mortgagee and those holding under him, the mortgagor is the legal owner; while as against the mortgagee and his assigns, his estate is purely equitable, and his remedies after condition broken are wholly equitable: *Ibid.*; *Fitch v. Pinckard*, 4 Scam. 69; *Vallette v. Bennett*, 69 Ill. 632. The mortgagee is permitted to pursue all his remedies at the same time, — action at law for the debt, ejectment for the possession, and in equity for a strict foreclosure or for a sale of the premises: *Karnes v. Lloyd*, 52 Ill. 113; *Erickson v. Rafferty*, 79 Ill. 209. Although the legal title is in the mortgagee as against the mortgagor, still a third person not claiming under the mortgagee cannot defeat the mortgagor's action of ejectment against himself by setting up such title outstanding in the mortgagee, even after that title has been made *legally* absolute by a breach of the condition: *Hall v. Lance*, 25 Ill. 277.

Kentucky. — The theory, legal and equitable, is the same as in Illinois. The mortgage is a conveyance of the legal estate to the mortgagee; he is entitled to possession after a default, and also before a default unless the mortgage itself provides for possession by the mortgagor. The mortgagor's estate as between him and the mortgagee is purely equitable, — a mere equity of redemption: *Redman v. Sanders*, 2 Dana, 68; *Brookover v. Hurst*, 1 Met. 665; *Stewart v. Barrow*, 7 Bush, 368; see *Woolley v. Holt*, 14 Bush, 788. It is held that a mortgagor cannot prevent the legal operation of the mortgage — that is, cannot defend an action at law — by showing that its execution was obtained from him by fraud: *Brookover v. Hurst*, *supra*.

Maine. — The mortgagee acquires the legal estate, and may recover possession before default if the mortgage does not otherwise provide: *Blaney v. Bearce*, 2 Me. 132. The mortgagee's possession is even declared by express statute: Rev. Stats. 1871, c. 90, sec. 2. As against the mortgagee and those

holding under or through him, the mortgagor's estate is equitable only; but as against all others, it is the legal ownership with all of its incidents: *Wilkins v. French*, 20 Me. 111.

Maryland. — The mortgagee obtains the legal estate, and with it the right to immediate possession: *Brown v. Stewart*, 1 Md. Ch. 87; *McKim v. Mason*, 3 Md. Ch. 186; *Leighton v. Preston*, 9 Gill, 201; *Jamieson v. Bruce*, 6 Gill & J. 72; 26 Am. Dec. 557; *Sumwalt v. Tucker*, 34 Md. 89; *Annapolis etc. R. R. v. Gantt*, 39 Md. 115. The mortgagee is permitted to enforce all his remedies at the same time: *Brown v. Stewart*; *Wilhelm v. Lee*, 2 Md. Ch. 322. Although he has the equitable estate only as against the mortgagee, as against third persons the mortgagor is the true owner, and holds the legal title subject to the rights of the mortgagee. The mortgagor, when permitted by the mortgagee to retain the possession, may recover in ejectment against a third person who cannot defend by the outstanding legal title in the mortgagee: *Georges Creek etc. Co. v. Detmold*, 1 Md. 225, 237; and as owner he may maintain a legal action for injury done to the estate by a third person: *Annapolis etc. R. R. v. Gantt*.

Massachusetts. — In this state the English theory is retained with more fullness than in any other of the states; and the absence of a full equitable jurisdiction through a large part of its judicial history has made the legal aspect of mortgages, and the legal remedies of mortgagees, more important perhaps than the equitable view. The legal estate of the mortgagee is complete, and accompanied with all its incidents; the mortgagor's estate is wholly equitable as between the parties, but as against third persons it has more the qualities of a legal ownership. The view of the Massachusetts courts can be most clearly explained in the language of one or two leading cases. In *Ewer v. Hobbs*, 5 Met. 1, 3, Shaw, C. J., said: "The first great object of a mortgage is, in the form of a conveyance in fee, to give to the mortgagee an effectual security, by the pledge or hypothecation of real

in most of the states he is regarded, against all such persons, as the legal owner, and as entitled to the possession,

estate, for the payment of a debt, or the performance of some other obligation. The next is, to leave to the mortgagor, and to purchasers, creditors, and all others claiming derivatively through him, the full and entire control, disposition, and ownership of the estate, subject only to the first purpose,—that of securing the mortgagee. Hence it is that, as between the mortgagor and mortgagee, the mortgage is to be regarded as a conveyance in fee; because that construction best secures him in his remedy and his ultimate right to the estate, and to its incidents, the rents and profits. But in all other respects, until foreclosure [i. e., a strict foreclosure], when the mortgagee becomes the absolute owner, the mortgage is deemed to be a lien or charge, subject to which the estate may be conveyed, attached, and in other respects dealt with as the estate of the mortgagor. And all statutes upon the subject are to be so construed; and all rules of law, whether administered in law or equity, are to be so applied as to carry these objects into effect." In *Howard v. Robinson*, 5 Cush. 119, 123, the same judge said: "Mortgaging is not such a conveying away of the estate as divests the entire title of the owner. It is a charge or encumbrance created out of that estate, and may amount to a small part only of its value. Although, as between the mortgagor and mortgagee, it is a transmission of the fee, which gives the mortgagee a remedy in the form of a real action, and constitutes a legal seisin, yet as to most other purposes a mortgage, before the entry of the mortgagee, is but a pledge and real lien, leaving the mortgagor to most purposes the real owner." The mortgagee is entitled to enter and to hold possession; and after a default by the mortgagor an ordinary form of remedy by the mortgagee is a recovery of possession by an appropriate action at law,—a real action. Having thus obtained possession he is regarded as the legal owner, subject to the mortgagor's equitable remedy of redemption; he may convey the land, and on his death intestate it descends to his

heirs. His legal estate is ordinarily made absolute by a strict foreclosure, rather than by a decree for a judicial sale: *Bradley v. Fuller*, 23 Pick. 1, 9; *Hapgood v. Blood*, 11 Gray, 400; *Sparhawk v. Bagg*, 16 Gray, 583; *Steel v. Steel*, 4 Allen, 417; *Silloway v. Brown*, 12 Allen, 30; *Norcross v. Norcross*, 105 Mass. 265. Able text-writers who are accustomed to and familiar with the theory prevailing in Massachusetts and other New England states have sometimes failed, I think, to appreciate the extent to which the purely equitable system has been followed in other states, and have been inclined to represent the Massachusetts type as adopted throughout the entire country, with the exception of a very few states, and they have thus conveyed an erroneous impression concerning the general American doctrine. See, for example, the chapters on mortgages in Professor Washburn's great work on real property.

Mississippi.—This state, like Delaware, should be placed in the second class, were it not for a single feature of the system. As against all third persons, and as against the mortgagee himself until a breach of the condition, the legal estate, both in law and in equity, remains in the mortgagor, and the interest of the mortgagee is merely an equitable lien. But upon the mortgagor's default in not complying with the condition, the legal title is considered as passing to the mortgagee, and with it the right to recover possession of the land by an action of ejectment: *Harmon v. Short*, 8 Smedes & M. 433; *Hill v. Robertson*, 24 Miss. 368; and this rule is established by statute: Rev. Code 1880, sec. 1204. But even after possession has thus been acquired, the mortgagee's interest is not a full legal estate; it is still a lien or pledge, and is personal rather than real property. The single fact that the mortgagee may thus recover possession by a legal action before foreclosure is the only feature which preserves any resemblance to the old common-law system, and practically the equitable theory seems to prevail over the legal. In *Buckley v. Daley*, 45 Miss. 333, 345, *Peyton*,

although he may not be in actual possession. The mortgage being a conveyance of the legal estate, and not a

C. J., speaking of the mortgagee's interest after he had thus obtained possession, said: "The relation of debtor and creditor exists, and the equity of redemption is unimpaired. Although the mortgagee has a chattel interest only, yet, in order to render his pledge available, and give him the intended benefit of his security, it is considered as real property to enable him to maintain ejectment for the recovery of the possession of the land mortgaged; when contemplated in every other point of view, it is personal property." See also *Carpenter v. Bowen*, 42 Miss. 23, 49; *Buck v. Payne*, 52 Miss. 271. It is very plain that the legal estate of the mortgagee in possession is nominal only, and is very different from the mortgagee's estate under the same circumstances in Massachusetts.

Missouri. — The doctrine is similar to that in Mississippi. The mortgagor holds the legal estate against all third persons, and against the mortgagee himself, until a breach of the condition; but upon a default, the legal interest passes to the mortgagee to such an extent that he may recover possession of the premises by a legal action: *Walcoep v. McKinney's Heirs*, 10 Mo. 229; *Kennett v. Plummer*, 28 Mo. 142; *Sutton v. Mason*, 38 Mo. 120; *Woods v. Hilderbrand*, 46 Mo. 284; 2 Am. Rep. 513; *Johnson v. Houston*, 47 Mo. 227; *Reddick v. Gressman*, 49 Mo. 389; [*Bailey v. Winn*, 101 Mo. 649.] And if the debt is payable in installments, a failure to pay any one of them is such a default that the mortgagee may at once recover possession by a legal action: *Reddick v. Gressman*. This legal interest, however, is so far from being a full and complete estate, and it partakes so much of the nature of a mere lien, that upon payment of the debt it is *ipso facto* destroyed, and the mortgagor becomes at once vested with an absolute legal estate, without any reconveyance: *Pease v. Pilot Knob Iron Co.*, 49 Mo. 124. Practically, therefore, the equitable theory prevails in this state.

New Hampshire. — The theory and the practice resemble those in Massachusetts. The mortgage is a convey-

ance and passes the legal title, the seisin, and the right of possession immediately to the mortgagee. As against him the mortgagor has, before default, the mere legal right to regain the title by a performance of the condition; while after a default he has nothing but an equity of redemption: *Brown v. Cram*, 1 N. H. 169; *McMurphy v. Minot*, 4 N. H. 251, 255; *Southwin v. Mendum*, 5 N. H. 420; *Hobart v. Sanborn*, 13 N. H. 226; 33 Am. Dec. 483; *Tripe v. Marcy*, 39 N. H. 439. Against all other persons, however, not holding under the mortgagee, the mortgagor is so far the legal owner that he may recover possession of the land by an action at law: *Ellison v. Daniels*, 11 N. H. 274; *Parish v. Gilman*, 11 N. H. 293, 298; *Great Falls Co. v. Worster*, 15 N. H. 412, 444; *Whittemore v. Gibbs*, 24 N. H. 484. The mortgagee, unless prevented by some provision in the mortgage, may recover possession at any time, the possession of the mortgagor being, in theory, a wrongful withholding; but as long as the mortgagee does not exercise his right, and permits the mortgagor to remain in possession, such possession is treated as retained by the mortgagee's permission, and the mortgagor is not accountable for the rents and profits during the continuance of this permissive holding: *Chellis v. Stearns*, 22 N. H. 312, 315; *Furbush v. Goodwin*, 29 N. H. 321, 332.

New Jersey. — The legal estate is conveyed to the mortgagee immediately upon the execution of the mortgage; but the legal doctrines have been so modified by equitable principles that he does not obtain a right to enter upon the land, and recover its possession by an action at law, until the mortgagor has made a default: *Sanderson v. Price*, 21 N. J. L. 646, note; *Shields v. Lozeau*, 34 N. J. L. 496; 3 Am. Rep. 256, per Depue, J. But the mortgage is still regarded so much as a mere security for the debt, and the mortgagee's legal title as merely a means for enforcing this security, that after a default, and even after the mortgagee's obtaining possession, his estate is destroyed, and the legal title *ipso facto* reverts in the

mere lien between the immediate parties thereto, the mortgagee is entitled to the possession of the premises,

mortgagor, by a payment of the debt, without any reconveyance: *Shields v. Lozear, supra*; *Osborne v. Tunis*, 25 N. J. L. 633, 651; *Montgomery v. Bruere*, 4 N. J. L. 260, 279, per Southard, J.; 5 N. J. L. 865.

North Carolina. — The legal estate of the mortgagee entitling him to possession, and the equitable estate of the mortgagor entitling him to redeem after default, are preserved distinct. If the mortgagor is suffered to retain possession, he is not responsible for the rents and profits received during his holding: *Hemphill v. Ross*, 66 N. C. 477; *Ellis v. Hussey*, 66 N. C. 501; *State v. Ragland*, 75 N. C. 12. [See *Killebrew v. Hines*, 104 N. C. 182; 17 Am. St. Rep. 672.]

Ohio. — As between the parties, the mortgagee acquires a legal estate, and can recover the possession by an action at law after a default, but *not before default*. As against all persons except the mortgagee and his assigns, the legal estate remains in the mortgagor, and the mortgagee's legal title is merely a security for payment of the debt: *Harkrader v. Leiby*, 4 Ohio St. 602; *Allen v. Everly*, 24 Ohio St. 97, 114; *Rands v. Kendall*, 15 Ohio, 671; [*Ranney v. Hardy*, 43 Ohio St. 157.]

Pennsylvania. — As between the parties, the mortgage is a conveyance of the legal estate to the mortgagee, which enables him to enter at once and hold the land, or recover the possession by ejectment, as well before as after default, unless otherwise stipulated in the instrument itself; this legal estate of the mortgagee is full and complete, subject only to the mortgagor's equity: *Youngman v. Elmira etc. R. R.*, 65 Pa. St. 278, 285; *Brobst v. Brock*, 10 Wall. 519. As to all persons except the mortgagee and his assigns, the mortgage is a lien, and the legal estate remains in the mortgagor both in law and in equity: *Brobst v. Brock, supra*. In *Tryon v. Munson*, 77 Pa. St. 250, *Agnew, J.*, very clearly and accurately describes the legal interest of the mortgagee according to this theory: "Thus we perceive an interest or estate in the land itself, capable of enjoyment, and enabling the mortgagee to grasp and hold it

actually, and not a mere lien or potentiality to follow it by legal process and condemn it for payment. The land passes to the mortgagee by act of the party himself, and needs no legal remedy to enforce the right. But a lien vests no estate, and is a mere incident of the debt, to be enforced by a remedy at law, which may be limited. It is true, if the mortgagee be held [kept] out, he may have to resort to ejectment; but this is to avoid a conflict and the statutory penalties for a forcible entry, for otherwise he may take peaceable possession, and is not liable as a trespasser." From the absence of a full equitable jurisdiction until very recent legislation, the remedies of the mortgagee in this state have been to a great extent obtained by means of legal actions. [The mortgagor, also, may redeem against the mortgagee in possession by means of an equitable action of ejectment: *Wells v. Van Dyke*, 109 Pa. St. 330.]

Rhode Island. — The English legal and equitable theory is adopted with the same modifications as in Massachusetts. The mortgage is a true conveyance; the mortgagee obtains a full legal estate, and may recover possession, the mortgagor's interest after a default being a mere equity of redemption. The mortgagee's legal estate is so complete that he may recover at law against the mortgagor for waste to the land during the latter's possession: *Carpenter v. Carpenter*, 6 R. I. 542; *Waterman v. Matteson*, 4 R. I. 539, 545. In the latter case, *Ames, C. J.*, said: "Formerly the right of the mortgagor was, upon a breach of the condition, wholly gone at law, and his equity to redeem was recognized only by the tribunal able to enforce such a right. It is true that in modern times the courts of law have, for many purposes, treated the mortgagor in possession as the real owner of the estate, looking upon a mortgage in the same light that a court of equity does, as a mere security for the mortgage debt; but we can see no reason why such courts should recognize in a mortgagor in possession under a forfeited mortgage greater rights over the estate than courts of equity do." It

at least after the condition is broken, and may recover such possession from the mortgagor by a legal action; but in many, and even in most, of these states the mortgagor may retain the possession until a default is made. In respect to the foregoing essential features there is a general agreement in the jurisprudence of all the states which compose this first class; but with regard to other and incidental matters there is a divergence in their rules which prevents any further generalization. It should be added, however, that in most of these states the equitable theory is the one which chiefly prevails in practice; mortgagors are ordinarily left in possession and treated as the owners, and the common remedy of the mortgagee is a decree of foreclosure and for the sale of the mortgaged premises. In a few states, however, it is customary for the mortgagee to recover possession, by action at law if necessary, and to cut off the mortgagor's equity of redemption by a strict foreclosure. The states which have adopted this method in its substantial elements are Alabama, Arkansas, Connecticut, Delaware, Illinois, Kentucky, Maine, Maryland, Massachusetts, Mississippi,

was therefore held that waste done by a mortgagor left in possession was a *legal* wrong, and that the mortgagee could maintain an action of replevin for wood and timber cut on the land in such a manner as to constitute waste.

Tennessee. — The mortgagee obtains the legal title, and may recover possession of the land at once by an action at law; and as against him the mortgagor's interest is wholly equitable: *Henshaw v. Wells*, 9 Humph. 568; *Vance's Heirs v. Johnson*, 10 Humph. 214; [*Bank v. Ewing*, 12 Lea, 598.]

Vermont. — The mortgagee acquires the legal estate by means of the mortgage itself, but the statute secures the possession of the mortgagor until he makes a default: Gen. Stats. 1870, c. 40, sec. 12. Upon a default, the mortgagee is entitled to possession, and may enter, or may immediately bring ejectment: *Lull v. Matthews*, 19 Vt. 322; *Hagar v. Brainerd*, 44 Vt. 294. While the mortgagor is permitted to retain

the possession, he is so far the owner that he is not accountable for the rents and profits to the mortgagee, and with respect to all other persons he is regarded as the legal owner for all purposes: *Ibid.*; *Hooper v. Wilson*, 12 Vt. 695; *Wilson v. Hooper*, 12 Vt. 653; 36 Am. Dec. 366; *Walker v. King*, 44 Vt. 601.

Virginia and West Virginia. — The distinction between the legal estate of the mortgagee, and the equity of redemption of the mortgagor, is sharply maintained. Unless restrained by the terms of the mortgage itself, the mortgagee may take possession at once, and after a default he may always recover the possession, and is then the legal owner of the land. The mortgagor's only remedy in such case is by a suit to redeem: *Faulkner v. Brockenhrough*, 4 Rand. 245. [The mortgagee may pursue his remedies at law upon the debt and in equity upon the mortgage at the same time: *Priddy v. Hartsook*, 81 Va. 67.]

Missouri, New Hampshire, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, and West Virginia.

§ 1188. **Second Method—The Equitable Theory Alone.**

—In this method of treating mortgages, the conflict between the legal and the equitable conceptions is entirely removed. Partly through the adoption of equitable doctrines by the law courts, and partly through the operation of statutes, the legal theory of mortgages has been abandoned, and the equity theory has been left in full force, furnishing a single and uniform collection of rules recognized and administered, so far as necessary, alike by courts of law and of equity.¹ The mortgage is not a con-

¹ I shall arrange the states and territories composing this class, with a reference to important decisions and statutes in each, so that the extent and workings of the equitable theory may be fully illustrated.

California. — The equitable theory is carried to its logical consequences. The mortgage creates a lien on the land as security for the debt, and under no circumstances does it convey any legal title or estate to the mortgagee, whose interest is the same in law and equity. The mortgagor retains the full legal estate subject to the lien, until divested by a foreclosure sale. This view, which was originally announced by the courts, has been fully established by statute, and is incorporated into the Civil Code: Cal. Civ. Code, secs. 2920, 2926, 2927, 2936; Practice Act 1851, sec. 260; *McMillan v. Richards*, 9 Cal. 365; 70 Am. Dec. 655; *Haffley v. Maier*, 13 Cal. 13; *Goodenow v. Ewer*, 16 Cal. 461, 467; 76 Am. Dec. 540; *Boggs v. Fowler*, 16 Cal. 559; 76 Am. Dec. 561; *Fogarty v. Sawyer*, 17 Cal. 589; *Dutton v. Warschauer*, 21 Cal. 609, 623; 82 Am. Dec. 765; *Kidd v. Temple*, 22 Cal. 255; *Skinner v. Buck*, 29 Cal. 253; *Bludworth v. Lake*, 33 Cal. 255; *Jackson v. Lodge*, 36 Cal. 28; *Mack v. Wetzlar*, 39 Cal. 247; *Carpentier v. Brenham*, 40 Cal. 221; *Harp v. Calahan*, 46 Cal. 222; *Frink v. Le Roy*, 49 Cal. 314. [See also *McGurren v. Garrity*, 68 Cal. 566; *Tapia v. Demartini*, 77 Cal. 383; 11 Am. St. Rep. 288 (decla-

ration of trust in mortgagee's interest may be made by parol); *Smith v. Smith*, 80 Cal. 323; *Hall v. Arnott*, 80 Cal. 348 (deed absolute in form, but intended as a mortgage, conveys no right of possession).] The principles and reasons of this theory have been so ably explained and presented by the California supreme court that I shall quote at length some passages from one or two leading decisions, which will apply to all the states of this class, and will form a very appropriate introduction to the general discussion. In *McMillan v. Richards*, 9 Cal. 365, 407, 70 Am. Dec. 655, Field, J., examined the grounds of the doctrine with great care. After describing the common-law view of the mortgage, he proceeds: "But in equity a mortgage is regarded in a very different light. The settled doctrine of equity is, that a mortgage is a mere security for a debt, and passes only a chattel interest; that the debt is the principal, and the land the incident; that the mortgage constitutes simply a lien or encumbrance, and that the equity of redemption is the real and beneficial estate in the land, which may be sold and conveyed by the mortgagor, in any of the ordinary modes of assurance, subject only to the lien of the mortgage. This equitable doctrine, established to prevent the hardships springing by the rules of law from a failure in the strict performance of the conditions attached to the conveyance, and to give effect to the just in-

veyance, nor does it confer upon the mortgagee any estate in the land. It creates a lien on the land, or, in the

tent of the parties in contracts of this description, has been, in most of the states, gradually adopted by the courts of law, although in some instances to a limited extent only." He cites decisions from various states illustrating the foregoing proposition, and proceeds (p. 469): "A provision more extensive in effect than the New York statute is embodied in our Practice Act. Section 260 reads as follows: 'A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale.' This section takes from the instrument its common-law character, and restricts it to the purposes of security. It does not, it is true, in terms change the estates at law of the mortgagor and mortgagee, but by disabling the owner from entering for condition broken, and restricting his remedy to a foreclosure and sale, it gives full effect to the equitable doctrine. . . . The just and liberal doctrines of equity respecting mortgages have been adopted in this state, and asserted either directly or indirectly in repeated instances by this court." He quotes, in illustration, passages from several prior cases in the California reports, and adds: "The decisions from which the above citations are taken were made, with one exception, in equity cases; but the language of the court does not appear in any instance to have been governed by a consideration of the tribunal in which the remedy was sought, but entirely from a consideration of the nature of the contract. The mortgage being a mere security for a debt, it must follow that the payment of the debt, whether before or after default, will operate as an extinguishment of the mortgage. Indeed, in those courts, with some few exceptions, where the common-law view of mortgages is the most strictly adhered to, payment of the debt is held to vest the estate without a reconveyance in the mortgagor, though it is difficult to see upon what principle. If the mortgage is a conveyance after default, it must be equally so

before; the only difference being that in the one case the estate conveyed is conditional, and in the other absolute. If after default the estate be absolute, it is not easy to perceive how the grantee can be divested without deed, under the statute of frauds; and yet, according to the general doctrine of the modern cases, payment has that effect. This is one of the inconsistencies arising from a partial adoption of the equitable doctrines by the courts of law. In truth, *the original character of mortgages has undergone a change*. They have ceased to be conveyances, except in form. They are no longer understood as contracts of purchase and sale between the parties, but as transactions by which a loan is made on the side, and security for its repayment furnished on the other. They pass no estate in the land, but are mere securities; and default in the payment of the money secured does not change their character. Proceedings for the *foreclosure* of mortgages, in the sense in which the term is used in England and in several of the states, by which the mortgagor, after default, is called upon to repay the loan by a specified day, or be forever barred of his equity of redemption, are unknown to our law. The owner of the mortgage in this state can in no case become the owner of the mortgaged premises, except by purchase upon sale under judicial decree consummated by conveyance. A foreclosure suit by our law results only in a legal ascertainment of the amount due, and a decree directing a sale of the premises for its satisfaction, the surplus, if any, going to subsequent encumbrancers, or to the owners of the premises." In *Dutton v. Warschauer*, 21 Cal. 609, 621, 82 Am. Dec. 765, the same distinguished judge again explains the theory in the clearest and most accurate manner: "'In this state,' as we said in *Goodenow v. Ewer*, 16 Cal. 467, 76 Am. Dec. 540, 'a mortgage is not regarded as a conveyance vesting in the mortgagee any estate in the land, either before or after condition broken. It is regarded, as in fact it is intended by the parties,

apt language already quoted, "a potentiality to follow the land by proper process, and condemn it for payment"

as a mere security, operating upon the property as a lien or encumbrance only. Here the equitable doctrine is carried to its legitimate result. Between the view thus taken and the common-law doctrine — that the mortgage is a conveyance of a conditional estate — there is no consistent intermediate ground. In those states where the mortgage is sometimes treated as a conveyance, and at other times as a mere security, there is no uniformity of decision. The cases there exhibit a fluctuation of opinion between equitable and common-law views of the subject, and a hesitation by the courts to carry either view to its logical consequences. . . . The counsel of the defendant do not controvert the doctrine thus stated as applicable to mortgages executed since the statute of 1851 [quoted *ante*], but appear to consider that it was not intended to embrace mortgages previously executed. In this view, they are only partially correct. The doctrine was established not merely from a consideration of the provisions of the statute, but also from a consideration of the real object and intention of the parties in executing and receiving instruments of this kind. In truth, mortgages had long before lost, for nearly all purposes, their common-law character as conveyances, and been regarded as transactions by which security was furnished by a pledge of real estate for the payment of debts. Courts of equity, from an early date, had so regarded them; and courts of law, by 'a gradual and almost insensible progress,' had adopted the equitable view of the subject, though, we may add, not always carrying the equitable doctrine to its logical result. The equitable doctrine had prevailed to such an extent that in nearly all the states the interest of the mortgagee was treated by courts of law as real estate only so far as was necessary for the protection of the mortgagee, and to give him the full benefit of his security [citing cases from other states]. It was from a consideration of the character of the instrument, as settled by these decisions and the modern cases generally, that we were induced to adopt the equitable

doctrine as the true doctrine; and it was from a consideration of the provisions of the statute which led us to go beyond those cases, and carry the doctrine to its legitimate and logical result, and regard the mortgage as a security under all circumstances, both at law and in equity. Mortgages, therefore, executed before the statute, can only be treated as conveyances when that character is essential to protect the just rights of the mortgagee; mortgages since the statute are regarded at all times as mere securities, creating only a lien or encumbrance, and not as passing any estate in the premises: *Fogarty v. Sawyer*, 17 Cal. 592; *Lord v. Morris*, 18 Cal. 487, 488." In applying these doctrines it is further held that the interest of the mortgagee is not enlarged or affected by the fact that he is in possession under the mortgage; by his obtaining possession his right does not become a legal title. A mortgagee after default, whether in or out of possession, cannot convey a legal title to the land, and his deed of the land, without an assignment of the debt, is a mere nullity. When, however, the mortgagee takes possession after default, with permission of the mortgagor, it will be presumed that such possession was with the understanding that the mortgagee is to receive the rents and profits and apply them on the debt; and unless a limitation on the length of his possession was fixed, it will be considered as extending until the debt is satisfied. This peculiar possessory right thus obtained by the mortgagee may be assigned by an instrument purporting to assign it in express terms, but will not pass by a mere ordinary deed of the land: *Dutton v. Warschauer*, *supra*; *Nagle v. Macy*, 9 Cal. 426; *Frink v. Le Roy*, 49 Cal. 314. These conclusions as to the mortgagee in possession seem to agree with the view taken by the latest New York decisions on the subject: See *post*, § 1189.

Colorado. — The same doctrine prevails: *Drake v. Root*, 2 Col. 685. A mortgagee who obtains peaceable possession will not be dispossessed until the debt is paid, and he may even maintain ejectment against a third

of the debt. The debt is the principal fact, and the mortgage is wholly incidental or collateral thereto, and

person not holding under the mortgage: *Eyster v. Gaff*, 2 Col. 228.

Dakota.—Civ. Code, secs. 1722, 1723, 1727, 1731, 1733: Substantially the same as in California.

Florida.—Bush's Dig. of Stats. 1872, pp. 611, 612; [McLellan's Digest, 1881, c. 153, sec. 3.] A trust deed to secure a debt is held not to be a mortgage: *Soutter v. Miller*, 15 Fla. 625.

Georgia.—The mortgage only creates a lien; the mortgagee has no right to the possession, except by means of a foreclosure; the mortgagor is entitled to possession until he is removed after a decree and a sale thereunder; and the rents and profits belong to him: Code 1880, sec. 1954; *Burnside v. Terry*, 45 Ga. 621; *Vason v. Ball*, 56 Ga. 268; *Davis v. Anderson*, 1 Ga. 176; *Ragland v. Justices etc.*, 10 Ga. 65; *Elfe v. Cole*, 26 Ga. 197; *Jackson v. Carswell*, 34 Ga. 279; *United States v. Athens Armory*, 35 Ga. 344; *Seals v. Cashin*, 2 Ga. Dec. 76.

Indiana.—The common-law and equitable theories in combination formerly prevailed; but the equitable theory is now established by statute, which provides that the mortgagor may retain possession until his estate is extinguished by foreclosure; the mortgage creates only a lien; the legal estate, subject thereto, remains in the mortgagor: 2 *Gavin and Hord's Rev. Stats.* 355; [1 *Rev. Stats.* 1888, sec. 1086;] *Fletcher v. Holmes*, 32 Ind. 497, 513; *Grable v. McCulloh*, 27 Ind. 472; *Morton v. Noble*, 22 Ind. 160; *Francis v. Porter*, 7 Ind. 213; *Reasoner v. Edmundson*, 5 Ind. 393.

Iowa.—Similar statute and the same doctrine: Code 1880, sec. 1938; *White v. Rittenmyer*, 30 Iowa, 268; *Courtney v. Carr*, 6 Iowa, 238; *Hall v. Savill*, 3 G. Greene, 37; 54 Am. Dec. 485.

Kansas.—The same: *Dassler's Comp. Laws* 1881, c. 68, sec. 1; *Life Ass'n etc. v. Cook*, 20 Kan. 19; *Chick v. Willetts*, 2 Kan. 384, 391. In this case, *Crozier, C. J.*, stated the doctrine and some of its necessary results with much freedom and force, but with perfect truth: "Some of the states still adhere to the common-law view, more

or less modified by the real nature of the transaction; but in most of them practically all that remains of the old theories is their nomenclature. In this state a clear sweep has been made by statute. The common-law attributes of mortgages have been wholly set aside; the ancient theories have been demolished; and if we could consign to oblivion the terms and phrases—without meaning, except in reference to those theories—with which our reflections are still embarrassed, the legal profession on the bench and at the bar would more readily understand and fully realize the new condition of things." There is a profound truth in this remark, which applies to a large part of the American jurisprudence. Nothing has done so much to confuse the minds of judges and lawyers, and to retard the operation of legal reforms, as the constant retention and use of former names and phrases when the facts or rules which they represented have been wholly abrogated. The prejudicial effects of this practice are felt in all the states which have adopted the reformed procedure.

Louisiana.—The jurisprudence of this state being based upon the civil law, the common-law notions concerning the mortgage were never accepted. The mortgage is a lien, and the whole title subject thereto is left in the mortgagor. Indeed, the law of Louisiana is silent upon any division of estates into legal and equitable: Civ. Code 1875, secs. 3278, 3279, 3290. The ordinary mortgage is a "right granted to the creditor over the property of the debtor for the security of his debt, and gives him the power of having the property seized and sold in default of payment." "Mortgage is a species of pledge, the thing mortgaged being bound for the payment of the debt or fulfillment of the obligation." There is also a kind of mortgage known as the "conventional mortgage." In the conception of the civil law a mortgage is a species of alienation, not, however, of the property itself,—the dominion or ownership of the thing,—but of a certain right in respect to the thing, which right is really identical with

intended to secure its payment. The right or interest of the mortgagee from being a legal estate is changed into

our "equitable lien" as distinguished from our "common-law lien": See *Duclaud v. Rousseau*, 2 La. Ann. 168.

Michigan. — A mortgage merely creates a lien, and no estate in the mortgagee, the full legal estate, subject to the lien, remaining in the mortgagor. The statute prohibits the mortgagee or owner of the mortgage from maintaining any action to recover possession of the land, until he has obtained the title through a sale under a foreclosure: *Comp. Laws* 1871, p. 1775; [*Howell's Stats.* 1882, sec. 7847;] *Gorham v. Arnold*, 22 Mich. 247; *Caruthers v. Humphrey*, 12 Mich. 270; *Wagar v. Stone*, 36 Mich. 364.

Minnesota. — Similar statute and the same doctrine: *Gen. Stats.* 1878, c. 75, p. 818; [*Kelly's Stats.* 1891, sec. 5407]; *Adams v. Corriston*, 7 Minn. 456; *Donnelly v. Simonton*, 7 Minn. 167; *Berthold v. Holman*, 12 Minn. 335; 93 Am. Dec. 233; *Berthold v. Fox*, 13 Minn. 501; 97 Am. Dec. 243; *Rice v. St. Paul etc. R. R.*, 24 Minn. 464; *Parsons v. Noggle*, 23 Minn. 328. The opinion of Emmett, C. J., in *Adams v. Corriston*, gives a very instructive statement of the doctrine. [See also *Johnson v. Sandhoff*, 30 Minn. 197; *Meighen v. King*, 31 Minn. 115; *Rogers v. Benton*, 39 Minn. 39; 12 Am. St. Rep. 613 (if mortgagee lawfully in possession so remains until right of redemption is barred, he becomes vested with the absolute legal title).]

Nebraska. — Similar statute and the same doctrine: *Gen. Stats.* 1873, c. 61, sec. 55; [*Comp. Stats.* 1891, c. 73, sec. 55;] *Kyger v. Ryley*, 2 Neb. 20, 28; *Davidson v. Cox*, 11 Neb. 250; *Hurley v. Estes*, 6 Neb. 386; [*Burnham v. Doolittle*, 14 Neb. 214.] A deed of trust to secure payment of a debt is regarded as a mortgage, the legal title remaining in the grantor: *Kyger v. Ryley*; *Webb v. Hoselton*, 4 Neb. 308; 19 Am. Rep. 638.

Nevada. — Statute borrowed from the legislation of California, and substantially the same; the same doctrine prevails: 1 *Comp. Laws*, sec. 1323; *Hyman v. Kelly*, 1 Nev. 179; *Whitmore v. Shiverick*, 3 Nev. 288.

New York. — This state was one of
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the earliest to modify the doctrine concerning mortgages, by discarding the old common-law theory and adopting the equitable view alone. Although prior to the Revised Statutes the mortgagee was able after default to recover possession of the premises by ejectment, yet his title was legal only so far as was considered necessary for his security; it did not enable him to convey the land: *Waters v. Stewart*, 1 Caines Cas. 47, per Kent, J.; *Jackson v. Willard*, 4 Johns. 41; *Runyan v. Mersereau*, 11 Johns. 534; 6 Am. Dec. 393; *Stanard v. Eldridge*, 16 Johns. 254; *Jackson v. Bronson*, 19 Johns. 325; *Waring v. Smyth*, 2 Barb. Ch. 119, 135; 47 Am. Dec. 299. The Revised Statutes of 1830 swept away all semblance of legal estate in the mortgagee by depriving him of the right to recover possession even after default; and the doctrine has since become fully established that the mortgage creates a lien only, and no estate, and that the legal title and estate remain in the mortgagor: 2 *Rev. Stats.*, p. 312, sec. 57; [*Code Civ. Proc.*, sec. 1498;] *Astor v. Hoyt*, 5 Wend. 603; *Phyfe v. Riley*, 15 Wend. 248; 30 Am. Dec. 55; *Astor v. Miller*, 2 Paige, 68; *Bell v. Mayor etc. of N. Y.*, 10 Paige, 49; *Waring v. Smyth*, 2 Barb. Ch. 119, 135; *Packer v. Rochester etc. R. R.*, 17 N. Y. 283; *Power v. Lester*, 23 N. Y. 527; *Merritt v. Bartholick*, 36 N. Y. 44; *Trimm v. Marsh*, 54 N. Y. 599; 13 Am. Rep. 623; *Calkins v. Calkins*, 3 Barb. 305; *Bryan v. Butts*, 27 Barb. 503. [A deed absolute in form, but intended as a mortgage, conveys no right of possession: *Shattuck v. Bascom*, 105 N. Y. 39; *Thorn v. Sutherland*, 123 N. Y. 236.] If the mortgagee, with the consent of the mortgagor, or in any other lawful manner, obtains possession of the land, his possession is protected; the mortgagor cannot recover it by an action at law, but is left to his equitable remedy by redemption. This apparent anomaly, however, is explained by the latest decisions, and does not require any assumption of a legal estate in the mortgagee; *Packer v. Rochester etc. R. R.*, *supra*; *Hubbell v. Moulson*, 53 N. Y. 225; 13 Am. Rep. 519; *Mickles*

an equitable right enforceable by an equitable proceeding; it is for all purposes and under all circumstances personal assets; it may be assigned, and passes to the mortgagee's personal representatives on his death. The mortgagee is not entitled to possession of the mortgaged premises, and can maintain no legal action for their recovery, either before or after a breach of the condition; in fact, the mortgagor's default produces no change in the relations of the parties or in the nature of their respective interests, except that the mortgagee thereupon becomes enabled to enforce his lien by a proceeding of foreclosure. The mortgagee's interest being a mere lien, it is wholly destroyed, and the mortgagor's estate is left free and unencumbered, by a payment of the debt secured by it at any time before the premises are actually sold under a decree of foreclosure; the estate does not then *re-vest* in the mortgagor, since it has never gone out of him. On the other hand, the mortgagor's interest, instead of being an equitable estate, or right in equity to redeem the land from the mortgagee's ownership, is, for all purposes, under all circumstances, and between all parties, the legal estate, with all the incidents and qualities of legal owner-

v. Townsend, 18 N. Y. 575, 584; *White v. Rittenmyer*, 30 Iowa, 268.

Oregon. — The statute protects the mortgagor's possession and confirms his legal estate until a sale under a decree for a foreclosure: Code Civ. Proc., sec. 323; [Code of Proc. 1891, sec. 539]; *Besser v. Hawthorn*, 3 Or. 129. If the mortgagee obtains possession with the mortgagor's assent, then, as in California, his possession may continue until the debt is paid out of the rents and profits, or otherwise; until such payment the mortgagor cannot regain possession by an action at law: *Roberts v. Sutherlin*, 4 Or. 219.

South Carolina. — Similar statute and same general doctrine: Rev. Stats. 1873, p. 536; [Gen. Stats. 1882, c. 91;] *Thayer v. Cramer*, 1 McCord Eq. 395; *Nixon v. Bynum*, 1 Bail. 148; *Annelly v. De Saussure*, 12 S. C. 488; [Bredenberg v. Landrum, 32 S. C. 215.]

Texas: *Wright v. Henderson*, 12 Tex. 43; *Mann's Ex'x v. Falcon*, 25 Tex. 271; *Walker v. Johnson*, 37 Tex. 127, 129; and a deed of trust to secure a debt is treated in this respect as a mortgage: *Ibid*.

Utah: Civ. Prac. Act 1870, sec. 260.

Wisconsin. — Similar statute and same doctrine: Rev. Stats. 1871, p. 1671; [2 Sanborn and Berryman's Stats. 1889, sec. 3095;] *Wood v. Trask*, 7 Wis. 566; 76 Am. Dec. 230. A mortgagee who after default obtains possession of the land with consent of the mortgagor in any other lawful and peaceable manner has the right to retain the possession, as in New York, California, Oregon, etc.: *Gillett v. Eaton*, 6 Wis. 30; *Tallman v. Ely*, 6 Wis. 244; *Fladland v. Delaplaine*, 19 Wis. 459; *Hennessy v. Farrell*, 20 Wis. 42; *Avery v. Judd*, 21 Wis. 262; *Brinkman v. Jones*, 44 Wis. 498.

ship, but at the same time encumbered by or subject to the lien of the mortgage, and liable, therefore, to be cut off and divested by a sale under a decree of foreclosure if the debt is not paid according to the terms of the mortgage. It is an entire misuse of language to apply the name "equity of redemption" to this *legal* estate of the mortgagor; and the continued employment of the phrase in the legal nomenclature of the states which have adopted this theory of the mortgage is to be regretted, since it is the occasion of constant misapprehension and confusion of thought.¹ It is the natural and inevitable result of this system that in all the states where it prevails the mortgagor is not *ordinarily*, under *ordinary* circumstances, compelled to apply to a court of equity for relief. Being entitled to retain possession of the premises after a default, he is generally in a position to act on the defensive, and is not obliged to bring a suit in equity for a redemption. On the other hand, the mortgagee, not being permitted to recover possession and hold the land, is compelled to enforce his lien by a suit in equity, in which he obtains a decree for a sale of the mortgaged premises. In several of the states, the remedy of a strict foreclosure has been denied to him by statute. The mode of treating the mortgage thus described has been adopted in the following states and territories: California, Colorado, Dakota, Florida, Georgia, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Nebraska, Nevada, New York, Oregon, South Carolina, Texas, Utah, and Wisconsin.²

§ 1189. **The Mortgagee in Possession under This Method.**—The foregoing system, as it is administered in many of the states, contains one apparent inconsistency which requires a brief explanation. While the mortgagee is declared to have no legal estate, and is unable to recover possession of the land against an unwilling mortgagor or owner of the fee subject to the mortgage, yet if the mort-

¹ See *Trimm v. Marsh*, 54 N. Y. 599; 13 Am. Rep. 623, per Earl, J.; *Chick v. Willetts*, 2 Kan. 384, per Crozier, C. J.

² To these might perhaps be added Delaware, Mississippi, and Missouri: See *ante*, under preceding paragraph.

gagee, while the mortgage is still subsisting, does in any lawful manner obtain the possession, the courts have established the doctrine that his interest under the mortgage enables him to retain such possession, and to defend it against the mortgagor or those succeeding to *his* title. In other words, the mortgagor is not permitted to recover back the possession, in an action at law, upon the strength of his own acknowledged legal estate; but his only remedy is in equity by a suit to redeem. Undoubtedly this doctrine, when first admitted, was the result of the old common-law notions still lingering in the minds of the judges before the purely equitable theory had become fully developed; but it is certainly difficult to reconcile the doctrine, *on principle*, with this theory. The more recent decisions have perceived and admitted the incongruity; and the courts, while retaining the doctrine as settled, have guarded against any inference from it that the mortgagee has acquired a legal estate by his possession; his right to retain possession does not depend upon an estate held by him; his possession is protected by his lien. It is certainly more simple and just that the mortgagee should be left in possession, and the mortgagor forced to redeem, than that the mortgagor should be permitted to recover the possession by an action at law, and be immediately liable to the consequences of a foreclosure suit in equity brought by the mortgagee.¹

§ 1190. **Equitable Remedies of the Parties under This Method.** — It is plain from the foregoing outline that in the commonwealths named in the second division a complete revolution has been wrought in the equity jurispru-

¹ Hubbell v. Moulson, 53 N. Y. 225; 13 Am. Rep. 519; Mickles v. Townsend, 18 N. Y. 575, 584; Packer v. Rochester etc. R. R., 17 N. Y. 283, 295; Waring v. Smyth, 2 Barb. Ch. 119, 135; 47 Am. Dec. 299; White v. Rittenmyer, 30 Iowa, 268; Frink v. Le Roy, 49 Cal. 314; Nagle v. Macy, 9 Cal. 426; Dutton v. Warschauer, 21 Cal. 609; 82 Am. Dec. 765; Roberts v. Sutherlin, 4 Or. 219; Avery v.

Judd, 21 Wis. 262; Hennesy v. Farrell, 20 Wis. 42; Fladland v. Delaplaine, 19 Wis. 459; Gillett v. Eaton, 6 Wis. 30; Brinkman v. Jones, 44 Wis. 498; Martin v. Fridley, 23 Minn. 13; [Johnson v. Sandhoff, 30 Minn. 197; Rogers v. Benton, 39 Minn. 39; 12 Am. St. Rep. 613; Calhoun v. Lumpkin, 60 Tex. 185; Rodriguez v. Haynes, 76 Tex. 225; Spect v. Spect, 88 Cal. 437; 22 Am. St. Rep. 347.]

dence concerning mortgages. According to the original theory as it has been administered in England and in a portion of the states, the estate of the *mortgagor* being wholly equitable, the jurisdiction of equity deals chiefly, almost exclusively, with *his* interests, by protecting his rights, by enabling him to redeem the land from the mortgagee, and by compelling a reconveyance of the legal title which had been forfeited by his failure to perform the condition, and by thus putting him in a position to regain the possession. On the other hand, the mortgagee, being vested with the legal estate by means of the mortgage itself, and being able to obtain possession of the land by a legal action, is clothed with all the attributes of legal ownership, deals with the land as though it were his own, is amply protected by the legal remedies, and seldom resorts to the equitable remedy of a strict foreclosure by which the mortgagor's right of redemption is extinguished. In the second class of states and territories, the change is complete; the positions of the two parties are exactly reversed. Equity deals primarily and almost exclusively with the mortgagee. His interest under the mortgage is no longer an estate; it is in all courts, of common law, of probate, and of equity, a mere lien, an appendage of the debt, personal assets, a thing in action assignable with the debt, but incapable of being separated from the debt and transferred by itself. He has no legal remedy on the mortgage, no power to recover possession of the land, and can enforce the lien against the land in no legal action. The remedy which the courts of equity grant is based upon the notion that his interest is a mere equitable lien, and not an estate. The relief no longer consists in an extinguishment of the mortgagor's right, by which the absolute title is left in the mortgagee. Its primary object is an enforcement of the lien by a sale of the mortgaged premises and an application of the proceeds upon the debt. The mortgagor's estate is, of course, destroyed, or, to speak more accurately, *is transferred to*

the purchaser at the judicial sale. The term "foreclosure" is still applied to this process, but is evidently a misnomer when used to describe the effect produced on the mortgagor's interest; no "equity of redemption" is foreclosed or cut off, but a legal estate is taken from the mortgagor and transferred to the purchaser. The mortgagee is permitted to buy in the land at the sale, and may thus acquire the title; but he acquires it, not as mortgagee, but as purchaser. The mortgagor, on the other hand, retaining the full legal estate, subject only to the encumbrance, and being entitled to the possession, use, rents, and profits of the land up to the time when his title is finally divested by a judicial sale in a proceeding to enforce the lien, is enabled to defend his estate and possession, not only against third persons, but against the mortgagee himself, by legal actions; and as long as he does not either expressly or impliedly *surrender* the possession to the mortgagee, he has no need nor occasion to invoke the aid of equity. There is, indeed, one situation possible in which he *must* resort to equity for relief. If, through his express consent, or through any other lawful means, the mortgagee has been permitted to obtain possession of the land, the mortgagor's only remedy is the equitable suit for a redemption, in which an account of the rents and profits received can be adjusted, the amount of the debt ascertained, the mortgage extinguished, and the mortgagor restored. The situation which requires this interposition of equity on behalf of the mortgagor is comparatively of very rare occurrence.¹ The foregoing description of the equitable jurisdiction is especially applicable to the commonwealths which I have grouped in the second division; but it is also practically correct with reference to several of those

¹The equitable suit which may be brought by a mortgagor who is in undisturbed possession of the land, for the purpose of compelling the mortgagee to accept payment of the debt which is due and to discharge the mortgage, is ordinarily called a "suit for redemp-

tion"; but it plainly has nothing in common with the real suit to redeem, by which the mortgagor redeems — or buys back — his lost legal estate; it is simply a suit to remove the encumbrance or cloud upon his legal title.

assigned to the first division. A practical and accurate criterion, I think, would be found in the kind of remedy to enforce the mortgagee's rights which commonly prevails. In states where the remedy by strict foreclosure is the ordinary one, the double system of law and equity *must* necessarily exist in practice as well as in theory. Where the remedy by judicial sale under a decree is the usual one, the common-law notions, if they exist at all, must be virtually theoretical.

§ 1191. **Definition of Mortgage.** — A concise definition of mortgage which should embrace both its equitable and its legal character is virtually impossible. Considered in its modern character, as stripped of its legal notions and embodying purely equitable principles throughout a large portion of the United States, the definition given by the California Civil Code seems to be complete and accurate.¹ Several forms of definition, regarding the mortgage as

¹ Cal. Civ. Code, sec. 2920: "A mortgage is a contract by which specific property is *hypothecated* for the performance of an act, without the necessity of a change of possession." The term "hypothecated" is here used in its strict technical sense, and with appropriateness of application.

The following are examples of faulty and defective descriptions: "A mortgage is a conditional conveyance of land designed as a security for the payment of money, the fulfillment of some contract, or the performance of some act, and to be void upon such payment, fulfillment, or performance": *Mitchell v. Burnham*, 44 Me. 286, 299. "At common law a mortgage is defined to be a deed conveying lands conditioned to be void upon the payment of a sum of money, or the doing of some other act": *Lund v. Lund*, 1 N. H. 39, 41; 8 Am. Dec. 29. "A mortgage is defined to be a conveyance of an estate, by way of pledge, to secure a debt or the performance of some act, such as the payment of money or the furnishing of an indemnity, and to become void on payment or performance agreeably to the prescribed condition": *Wing v. Cooper*, 37 Vt. 169, 179. See also *Erskine v.*

Townsend, 2 Mass. 493, 495; 3 Am. Dec. 71; *Carter v. Taylor*, 3 Head, 30; *Montgomery v. Bruere*, 4 N. J. L. 260, 268. From these definitions no one would obtain even a suggestion of the modifications which equity has made in the nature of the mortgage. The following more full and correct description, as viewed from the double system of the English jurisprudence, is given by a standard text-book: "A mortgage may be described to be a conveyance of lands by a debtor to his creditor as a pledge and security for the repayment of a sum of money borrowed, with a proviso that such conveyance shall be void on payment of the money and interest on a certain day; and in all mortgages, although the money be not paid at the time appointed, by which the conveyance of the lands becomes absolute at law, yet the mortgagor has still an equity of redemption,—that is, a right in equity, on payment of the principal, interest, and costs, within a reasonable time, to call for a reconveyance of the lands": *Powell on Mortgages*, 4; see also *Coote on Mortgages*, 1; *Fisher on Mortgages*, Introduction, p. 2; 1 *Washburn on Real Property*, c. 16, sec. 1.

a common-law conveyance, are added in the foot-note. These attempted definitions are all erroneous, upon any theory of the instrument; they do not go beyond the literal import of the language in which a mortgage is usually expressed; and they utterly ignore all the equitable elements, which are as much and as truly constituent parts of the mortgage as the legal elements. Any true definition based upon the original common-law and equitable system must embody and express all the double nature of the mortgage,—that it is both a lien in equity and a conveyance at law.

SECTION III.

VARIOUS FORMS AND KINDS OF MORTGAGE.

ANALYSIS.

- § 1192. In equity, a mortgage is a security for a debt.
- § 1193. Once a mortgage, always a mortgage.
- § 1194. Mortgage, and conveyance with an agreement of repurchase, distinguished.
- § 1195. The general criterion: the continued existence of a debt.
- § 1196. A conveyance absolute on its face may be a mortgage.
- §§ 1197–1199. Mortgage to secure future advances.
 - § 1197. As between the immediate parties.
 - § 1198. As against subsequent encumbrancers and purchasers.
 - § 1199. As affected by the recording act.
- §§ 1200–1203. Mortgages to secure several different notes.
 - § 1200. As between the original parties.
 - § 1201. Assignees of the notes; order of priority among them.
 - § 1202. Effect of an assignment of the notes.
 - § 1203. Priority between an assignee and the mortgagee.

§ 1192. **In Equity, a Mortgage is a Security for a Debt.**—In the equitable view, a mortgage may be described in general terms as an assurance or pledge of or charge upon property, real or personal, for an antecedent, present, or future debt or loan, as security for and redeemable on the repayment of such debt.¹ The fundamental principle of equity is, that whenever a conveyance of land

¹ *Seton v. Slade*, 7 Ves. 265, 273.

is given for the purpose of securing payment of an existing debt, it is a mortgage. If the fact is established that a debt exists between the parties, and the transaction did not amount to a present payment, satisfaction, or discharge of that debt, but recognized it as still continuing, to be paid at some future time, and was intended to be a security for such payment, then the instrument is always regarded in equity as a mortgage, whatever be its form.¹

§ 1193. **Once a Mortgage, Always a Mortgage.** — In general, all persons able to contract are permitted to determine and control their own legal relations by any agreements which are not illegal, or opposed to good morals or to public policy; but the mortgage forms a marked exception to this principle. The doctrine has been firmly established from an early day that when the character of a mortgage has attached at the commencement of the transaction, so that the instrument, whatever be its form, is regarded in equity as a mortgage, that character of mortgage must and will always continue. If the instrument is in its essence a mortgage, the parties cannot by any stipulations, however express and positive, render it anything but a mortgage, or deprive it of the essential attributes belonging to a mort-

¹ A court of equity will look beyond the external form, at the real relations between the parties, and will protect the debtor's equity of redemption, if necessary, in opposition to the literal terms of the instrument. This principle lies at the base of the entire equitable doctrine, and is applied to mortgages in the ordinary form, to deeds with a separate defeasance, to deeds absolute on their face, to deeds with accompanying agreements to reconvey, and to every other form of assurance which is in reality a security: *Stinchfield v. Milliken*, 71 Me. 567; *Moors v. Albro*, 129 Mass. 9; *Hassam v. Barrett*, 115 Mass. 256; *Campbell v. Dearborn*, 109 Mass. 130; 12 Am. Rep. 671; *McIntier v. Shaw*, 6 Allen, 83; *French v. Burns*, 35 Conn. 359; *Budd v. Van Orden*, 33 N. J. Eq. 143; *Judge v. Reese*, 24 N. J. Eq. 387; *Sweet v. Parker*, 22 N. J. Eq. 453;

Vanderhaize v. Hugues, 13 N. J. Eq. 244, 411; *Danzeisen's Appeal*, 73 Pa. St. 65; *Sweetzer's Appeal*, 71 Pa. St. 264; *Harper's Appeal*, 64 Pa. St. 315; *Houser v. Lamont*, 55 Pa. St. 311; 93 Am. Dec. 755; *Baughner v. Merryman*, 32 Md. 185; *Anthony v. Anthony*, 23 Ark. 479; *Church v. Cole*, 36 Ind. 34; *Hunter v. Hatch*, 45 Ill. 178; *Ewart v. Walling*, 42 Ill. 453; *Reigard v. McNeil*, 38 Ill. 400; *Wilson v. Patrick*, 34 Iowa, 362; *Holliday v. Arthur*, 25 Iowa, 19; *Richardson v. Barrick*, 16 Iowa, 407; *Holton v. Meighen*, 15 Minn. 69; [*Hoile v. Bailey*, 53 Wis. 434, 448; *Swift v. Lumber Co.*, 71 Wis. 482.]

If the instrument be in fact a mortgage, it is entirely immaterial that there is no provision for a redemption, or no day fixed for the payment: *Joynes v. Statham*, 3 Atk. 388; *Bell v. Carter*, 17 Beav. 11.

gage in equity. The debtor or mortgagor cannot, in the inception of the instrument, as a part of or collateral to its execution, in any manner deprive himself of his equitable right to come in after a default in paying the money at the stipulated time, and to pay the debt and interest, and thereby to redeem the land from the lien and encumbrance of the mortgage; the equitable right of redemption, after a default is preserved, remains in full force, and will be protected and enforced by a court of equity, no matter what stipulations the parties may have made in the original transaction purporting to cut off this right.¹

¹This doctrine is based upon the relative situation of the debtor and the creditor; it recognizes the fact that the creditor necessarily has a power over his debtor which may be exercised inequitably; that the debtor is liable to yield to the exertion of such power; and it protects the debtor absolutely from the consequences of his inferiority, and of his own acts done through infirmity of will. The doctrine is universal in its application, and underlies many special rules of equity. It extends to stipulations limiting the time of redemption, or the parties who may redeem; notwithstanding all such stipulations, the right to redeem is general: *Howard v. Harris*, 1 Vern. 33; *Newcomb v. Bonham*, 1 Vern. 7; *Willett v. Winnell*, 1 Vern. 488; *Jennings v. Ward*, 2 Vern. 520; *East I. Co. v. Atkyns*, Comyn, 346; *Spurgeon v. Collier*, 1 Eden, 55; *Jason v. Eyres*, 2 Ch. Cas. 33; *Floyer v. Lavington*, 1 P. Wms. 268; *Goodman v. Grierson*, 2 Ball & B. 274, 278; *Cowdry v. Day*, 1 Giff. 316; *Pritchard v. Elton*, 38 Conn. 434; *Henry v. Davis*, 7 Johns. Ch. 40; *Clark v. Henry*, 2 Cow. 324; *Rankin v. Mortimore*, 7 Watts, 372; *Jaques v. Weeks*, 7 Watts, 261, 275; *Woods v. Wallace*, 22 Pa. St. 171; *Hiester v. Maderia*, 3 Watts & S. 384, 388; *Johnston v. Gray*, 16 Serg. & R. 361, 365; 16 Am. Dec. 577; *Clark v. Condit*, 18 N. J. Eq. 358; *Vanderhaize v. Hugues*, 13 N. J. Eq. 244, 410; *Robinson v. Farrelly*, 16 Ala. 472; *Heirs of Stover v. Heirs of Bounds*, 1 Ohio St. 107; *Cherry v. Bowen*, 4 Sneed, 415; *Burrow v. Henson*,

2 Sneed, 658; *McNees v. Swaney*, 50 Mo. 388, 391; *Wilson v. Drumrite*, 21 Mo. 325; *Pierce v. Robinson*, 13 Cal. 116, 125; *Lee v. Evans*, 8 Cal. 424; *Rogan v. Walker*, 1 Wis. 527; but see *Glendenning v. Johnston*, 33 Wis. 347. [See also *Reed v. Reed*, 75 Me. 264; *Parmer v. Parmer*, 74 Ala. 285; *Jackson v. Lynch*, 129 Ill. 72.] And stipulations inserted in a mortgage, giving the mortgagee a collateral advantage not properly belonging to the contract of mortgage, are invalid: *Chambers v. Goldwin*, 9 Ves. 254, 271; *Langstaffe v. Fenwick*, 10 Ves. 405; *Leith v. Irvine*, 1 Mylne & K. 277; *Broad v. Selfe*, 9 Jur., N. S., 885; *Barrett v. Hartley*, L. R. 2 Eq. 789, 795; *Matthison v. Clarke*, 3 Drew. 3; *Chapple v. Mahon*, 5 I. R. Eq. 225; *Comyns v. Comyns*, 5 I. R. Eq. 583. On the other hand, an agreement with the mortgagor that the mortgagee shall have a preference of purchasing—a pre-emption—in case of a sale by the mortgagor is valid: *Orby v. Trigg*, 2 Eq. Cas. Abr. 599, pl. 24; 9 Mod. 2; *Cookson v. Cookson*, 8 Sim. 529. The mortgagor may, at any time after the execution of the mortgage, by a separate and distinct transaction, sell or release his equity of redemption to the mortgagee: *Trull v. Skinner*, 17 Pick. 213; *Remsen v. Hay*, 2 Edw. Ch. 535; *Hicks v. Hicks*, 5 Gill & J. 75; *McKinstry v. Conly*, 12 Ala. 678; *Wynkoop v. Cowing*, 21 Ill. 570. [See also *Stoutz v. Rouse*, 84 Ala. 309; *McMillan v. Jewett*, 85 Ala. 476; *Seymour v. Mackay*, 126 Ill. 341.] This is a transaction, however,

§ 1194. **Mortgage, and Conveyance with Agreement of Repurchase, Distinguished.**—The principle that equity looks beneath the external form in determining questions connected with mortgage has frequently been applied to a particular mode of dealing with real property. Where land is conveyed by an absolute deed, and an instrument is given back as a part of the same transaction, not containing the condition ordinarily inserted in mortgages, but being an agreement that the grantee will reconvey the premises if the grantor shall pay a certain sum of money at or before a specified time, the two taken together may be what on their face they purport to be,—a mere sale with a contract of repurchase,—or they may constitute a mortgage. In the first case, where the transaction is merely a sale and a contract of repurchase, the agreement must be fulfilled according to its terms. If the grantor fails to pay the money at the stipulated time, all his rights, either at law or in equity, under the contract are gone; there is no equity of redemption.¹ In the second case, if the transaction be a

which a court of equity will examine strictly, in order to be satisfied that it is a perfectly fair and independent proceeding, entirely unconnected with the original contract of mortgage: *Webb v. Rorke*, 2 Schoales & L. 661, 673; *Villa v. Rodriguez*, 12 Wall. 323; *Russell v. Southard*, 12 How. 139, 154; *Hyndman v. Hyndman*, 19 Vt. 9; 46 Am. Dec. 171; *Mills v. Mills*, 26 Conn. 213; *Holridge v. Gillespie*, 2 Johns. Ch. 30; *Baughner v. Merryman*, 32 Md. 185; *Locke's Ex'r v. Palmer*, 26 Ala. 312, 323; *Brown v. Gaffney*, 28 Ill. 149. [See also *Linnell v. Lyford*, 72 Me. 280; *Vangilder v. Hoffman*, 22 W. Va. 1; *Franklin v. Ayer*, 22 Fla. 654; *Niggeler v. Maurin*, 34 Minn. 118. See, however, *Melbourne Banking Co. v. Brongham*, 7 App. Cas. (Priv. Coun.) 307, where it is said that, inasmuch as the relation between the parties is not a confidential one, the burden of justifying the release does not rest upon the mortgagee.]

¹ *Barrell v. Sabine*, 1 Vern. 268;

Davis v. Thomas, 1 Russ. & M. 506; *Williams v. Owen*, 5 Mylne & C. 303; *Perry v. Meadowcroft*, 4 Beav. 197; *Alderson v. White*, 2 De Gex & J. 97; *French v. Sturdivant*, 8 Me. 246; *Rich v. Doane*, 35 Vt. 125; *Macaulay v. Porter*, 71 N. Y. 173; *Morrison v. Brand*, 5 Daly, 40; *Glover v. Payn*, 19 Wend. 518; *Holmes v. Grant*, 8 Paige. 243; *Brown v. Dewey*, 2 Barb. 28; *Merritt v. Brown*, 19 N. J. Eq. 286; *Haines v. Thomson*, 70 Pa. St. 434; *Ransone v. Frayser's Ex'rs*, 10 Leigh, 592; *Moss v. Green*, 10 Leigh, 251; 34 Am. Dec. 731; *Kelly v. Bryan*, 6 Ired. Eq. 283; *McLaurin v. Wright*, 2 Ired. Eq. 94; *Haynie v. Robertson*, 58 Ala. 37; *Pearson v. Seay*, 35 Ala. 612; 38 Ala. 643; *McKinstry v. Conly*, 12 Ala. 678; *Johnson's Ex'r v. Clark*, 5 Ark. 340; *Turner v. Kerr*, 44 Mo. 429; *Holmes v. Fresh*, 9 Mo. 200, 206; *Lane v. Dickerson*, 10 Yerg. 373; *Slutz v. Desenberg*, 28 Ohio St. 371; *Wilson v. Carpenter*, 62 Ind. 495; *Cornell v. Hall*, 22 Mich. 377; *Price v. Karnes*, 59 Ill. 276; *Han-*

mortgage, all the qualities and incidents of a mortgage attach, whatever be its external form, and whatever be the collateral stipulations. The maxim, Once a mortgage, always a mortgage, applies to this condition of fact with especial emphasis. The rights of the two parties are reciprocal: that of the grantor to redeem after a default in payment at the specified time is complete; that of the grantee to foreclose and cut off this equity of redemption is no less clear.¹

§ 1195. **The General Criterion — The Continued Existence of a Debt.** — Whether any particular transaction does thus amount to a mortgage or to a sale with a contract of repurchase must, to a large extent, depend upon its own special circumstances; for the question finally turns, in all cases, upon the real intention of the parties as shown upon the face of the writings, or as disclosed by extrinsic evidence. A general criterion, however, has

ford v. Blessing, 80 Ill. 188; Carr v. Rising, 62 Ill. 14; Pitts v. Cable, 44 Ill. 103; Smith v. Crosby, 47 Wis. 160; McNamara v. Culver, 22 Kan. 661; Farmer v. Grose, 42 Cal. 169; Page v. Vilhac, 42 Cal. 75; Henley v. Hotaling, 41 Cal. 22; Conway's Ex'rs v. Alexander, 7 Cranch, 218; and see Tufts v. Tapley, 129 Mass. 380. [See also Manchester etc. Ry Co. v. North Central etc. Co., 13 App. Cas. (H. L.) 554; affirming 35 Ch. Div. 191, and 32 Ch. Div. 447; Horbach v. Hill, 112 U. S. 144; Wallace v. Johnstone, 129 U. S. 58; Kerr v. Hill, 27 W. Va. 576; Douglass v. Moody, 80 Ala. 61; Stahl v. Dehn, 72 Mich. 645; Eames v. Hardin, 111 Ill. 634; Buse v. Page, 32 Minn. 111.]

¹ Goodman v. Grierson, 2 Ball & B. 274; Russell v. Southard, 12 How. 139; Flagg v. Mann, 2 Sum. 486; Wing v. Cooper, 37 Vt. 169; Carpenter v. Snelling, 97 Mass. 452; Rice v. Rice, 4 Pick. 349; Peterson v. Clark, 15 Johns. 205; Sweetzer's Appeal, 71 Pa. St. 264; McClurkan v. Thompson, 69 Pa. St. 305; Spring's Appeal, 60 Pa. St. 199; Houser v. Lamont, 55 Pa. St. 311; 93 Am. Dec. 755; Kellum v. Smith, 33 Pa. St. 158; Rankin v. Mortimere, 7 Watts, 372; Hiester v. Maderia, 3 Watts & S. 384; Baugher

v. Merryman, 32 Md. 185; Artz v. Grove, 21 Md. 456; Dougherty v. McCogan, 6 Gill & J. 275; Klinck v. Price, 4 W. Va. 4; 6 Am. Rep. 268; Robinson v. Willoughby, 65 N. C. 520; Lindsay v. Matthews, 17 Fla. 575; McNeill v. Norsworthy, 39 Ala. 156; Locke's Ex'r v. Palmer, 26 Ala. 312; Weathersly v. Weathersly, 40 Miss. 462, 469; 90 Am. Dec. 344; Scott v. Henry, 13 Ark. 112; Heath v. Williams, 30 Ind. 495; Watkins v. Gregory, 6 Blackf. 113; McKinney v. Miller, 19 Mich. 142; Bishop v. Williams, 18 Ill. 101; 15 Ill. 553; Miller v. Thomas, 14 Ill. 428; White v. Lucas, 46 Iowa, 319; Wilson v. Patrick, 34 Iowa, 362, 370; Hughes v. Sheaff, 19 Iowa, 335, 342; Trucks v. Lindsey, 18 Iowa, 504; Hickox v. Lowe, 10 Cal. 197; Polhemus v. Trainer, 30 Cal. 685. [See also Lanahan v. Sears, 102 U. S. 318; Snow v. Pressey, 82 Me. 552; Pearce v. Wilson, 111 Pa. St. 14; 56 Am. Rep. 243; Wofford v. Wyly, 72 Ga. 863; Rubelman v. Rummel, 72 Iowa, 40; Overstreet v. Baxter, 30 Kan. 55; Turner v. Wilkinson, 72 Ala. 361.] A grantor may, however, lose his right of redemption from a purchaser of the grantee by his fraudulent conduct: Tufts v. Tapley, 129 Mass. 380.

been established by an overwhelming consensus of authorities, which furnishes a sufficient test in the great majority of cases; and whenever the application of this test still leaves a *doubt*, the American courts, from obvious motives of policy, have generally leaned in favor of the mortgage. This criterion is the continued existence of a debt or liability between the parties, so that the conveyance is in reality intended as a security for the debt or indemnity against the liability. If there is an indebtedness or liability between the parties, either a debt existing prior to the conveyance, or a debt arising from a loan made at the time of the conveyance, or from any other cause, and this debt is still left subsisting, not being discharged or satisfied by the conveyance, but the grantor is regarded as still owing and bound to pay it at some future time, so that the payment stipulated for in the agreement to reconvey is in reality the payment of this existing debt, then the whole transaction amounts to a mortgage, whatever language the parties may have used, and whatever stipulations they may have inserted in the instruments. On the contrary, if no such relation whatsoever of debtor and creditor is left subsisting, then the transaction is not a mortgage, but a mere sale and contract of repurchase.¹ The writ-

¹ The practical test is, whether there is a liability, notwithstanding or independent of the conveyance and contract of reconveyance, which the grantee can enforce against the grantor. If a loan is made to the grantor at the time of executing the conveyance, and the continued existence of his indebtedness therefor is evidenced by some collateral engagement given by the grantor, such as a note or bond, the case would be simple, and the transaction clearly a mortgage. In the second place, if the conveyance is given in consideration of an antecedent debt due from the grantor, and this debt yet remains, so that the grantee may enforce his claim at some time or another against the grantor, the transaction is also a mortgage. But if this antecedent debt is wholly

satisfied and extinguished by the conveyance, so that no liability remains under any circumstances against the grantor, then there is no mortgage, since there is no debt to be secured thereby. In such a case the surrender up by the grantee of the written evidences of original indebtedness, or his cancellation thereof, would be very material circumstances. Thirdly, there may be neither a present loan nor an antecedent debt, but the grantee may undertake to assume some outstanding liability of the grantor, or to pay off some claim against the grantor, so that an obligation to reimburse him would rest upon the grantor, and the conveyance may be intended to indemnify the grantee and to secure the performance of the grantor's future continuing obligation,

ings *may* show on their face that the relation of debtor and creditor still continues, and that its existence and consequences are contemplated by the parties; or they may entirely fail to show any such fact, and may consist simply of an absolute conveyance and of a naked agreement to reconvey. While in the former case parol evidence is clearly inadmissible to contradict the terms of

in which case it would clearly be a mortgage. These conclusions are fully sustained by the course of modern decision.

Cases in which the transaction has amounted to a mortgage: French v. Burns, 35 Conn. 359; McIntier v. Shaw, 6 Allen, 83; Pardee v. Treat, 18 Hun, 298; Horn v. Keteltas, 46 N. Y. 605; Fiedler v. Darrin, 50 N. Y. 437, 441; 59 Barb. 651; Tibbs v. Morris, 44 Barb. 138; Marvin v. Prentice, 49 How. Pr. 385; Phillips v. Hulsizer, 20 N. J. Eq. 308; Sweet v. Parker, 22 N. J. Eq. 453; Harper's Appeal, 64 Pa. St. 315; Danzeisen's Appeal, 73 Pa. St. 65; Sweetzer's Appeal, 71 Pa. St. 264; Davis v. Demming, 12 W. Va. 246; Klinck v. Price, 4 W. Va. 4; 6 Am. Rep. 268; Clark v. Lyon, 46 Ga. 202; Lindsay v. Matthews, 17 Fla. 575; Crews v. Threadgill, 35 Ala. 334; Freeman v. Wilson, 51 Miss. 329; Sharkey v. Sharkey, 47 Mo. 543; Davis v. Clay, 2 Mo. 161; Wilson v. Giddings, 28 Ohio St. 554; Cotterell v. Long, 20 Ohio, 464; Ebert v. Chapman, 8 Baxt. 27; Blizzard v. Craigmiles, 7 Lea, 693; Bennett v. Union Bank, 5 Humph. 612; Heath v. Williams, 30 Ind. 495; Church v. Cole, 36 Ind. 34; Clark v. Finlon, 90 Ill. 245; Carr v. Rising, 62 Ill. 14; Hunter v. Hatch, 45 Ill. 178; Smith v. Doyle, 46 Ill. 451; Dwen v. Blake, 44 Ill. 135; Ragan v. Simpson, 27 Wis. 355; Yates v. Yates, 21 Wis. 473; Plato v. Roe, 14 Wis. 453; Knowlton v. Walker, 13 Wis. 264; White v. Lucas, 46 Iowa, 319; Scott v. Mewhirter, 49 Iowa, 487; Wilson v. Patrick, 34 Iowa, 362; Richardson v. Barrick, 16 Iowa, 407; Brush v. Peterson, 54 Iowa, 243; Archambau v. Green, 21 Minn. 520; Weide v. Gehl, 21 Minn. 449; Holton v. Meighen, 15 Minn. 69; Phoenix v. Gardner, 13 Minn. 430; Moore v. Wade, 8 Kan. 380; Leahigh v. White, 8 Nev. 147; Sears v. Dixon, 33 Cal. 326; Polhemus v. Trainer, 30

Cal. 685; Hickox v. Lowe, 10 Cal. 197; [Rockwell v. Humphrey, 57 Wis. 410; Manufacturers' Bank v. Rugee, 59 Wis. 223; Whittemore v. Fisher, 132 Ill. 243.]

Cases of sale and contract to repurchase: Williams v. Owen, 5 Mylne & C. 303; Alderson v. White, 2 De Gex & J. 97; Conway's Ex'rs v. Alexander, 7 Cranch, 218; Lund v. Lund, 1 N. H. 39; 8 Am. Dec. 29; Macaulay v. Porter, 71 N. Y. 173; Randall v. Sanders, 87 N. Y. 578; Morrison v. Brand, 5 Daly, 40; Glover v. Payn, 19 Wend. 518; Galt v. Jackson, 9 Ga. 151; Haynie v. Robertson, 58 Ala. 37; Slutz v. Desenberg, 28 Ohio St. 371; Wilson v. Carpenter, 62 Ind. 495; Price v. Karnes, 59 Ill. 276; Smith v. Crosby, 47 Wis. 160; Turner v. Kerr, 44 Mo. 429; McNamara v. Culver, 22 Kan. 661; Farmer v. Grose, 42 Cal. 169; Page v. Vilhac, 42 Cal. 75; Henley v. Hotaling, 41 Cal. 22. [See also Mitchell v. Wellman, 80 Ala. 16; Lounsbury v. Norton, 59 Conn. 170; Vincent v. Walker, 86 Ala. 333; Thomas v. Holmes Co., 67 Miss. 754.]

Antecedent debt.—If left existing, the conveyance is a mortgage; if satisfied, it is not a mortgage: Henry v. Davis, 7 Johns. Ch. 40; Clark v. Henry, 2 Cow. 324; Slee v. Manhattan Co., 1 Paige, 48; Holmes v. Grant, 8 Paige, 243; Rice v. Rice, 4 Pick. 349; Todd v. Campbell, 32 Pa. St. 250; Hamet v. Dundass, 4 Pa. St. 178; Robinson v. Willoughby, 65 N. C. 520; McKinstry v. Conly, 12 Ala. 678; Hoopes v. Bailey, 28 Miss. 328; Mason v. Moody, 26 Miss. 184; Ruffier v. Womack, 30 Tex. 332; Honore v. Hutchings, 8 Bush, 687; Slowey v. McMurray, 27 Mo. 113, 116; 72 Am. Dec. 251; Sutphen v. Cushman, 35 Ill. 186, 197; Goulding v. Bunster, 9 Wis. 513. [See also Perdue v. Bell, 83 Ala. 396; Rapiet v. Gulf City Paper Co., 77 Ala. 126; Pace v. Bartles, 47 N. J. Eq. 170.]

the writings, and to destroy their necessary character as a mortgage, in the latter case extrinsic parol evidence is always admissible to show the real situation of the parties, the existence of a debt, their intention to secure payment of that debt, and the actual character of the instruments as constituting a mortgage. While each case must involve its own special facts, the following circumstances are regarded by the courts as important, and as throwing much light upon the real intent and nature of the transactions: The existence of a collateral agreement by the grantor to pay money; his liability to pay interest; where a debt existed antecedent to the conveyance, the surrender or cancellation of the evidences of such indebtedness, or the suffering them to remain outstanding and operative, or the substitution of others in their place; the price of the conveyance being inadequate; the grantor still left in possession; an application or negotiation for a loan preceding or pending the transaction.¹

§ 1196. **A Conveyance Absolute on its Face may be a Mortgage.**—Any conveyance of land absolute on its face, without anything in its terms to indicate that it is otherwise than an absolute conveyance, and without any accompanying written defeasance, contract of repurchase, or other agreement, may, in equity, by means of extrinsic and parol evidence, be shown to be in reality a mortgage as between the original parties, and as against all those deriving title from or under the grantee, who are not

¹McNamara v. Culver, 22 Kan. 661; Clark v. Finlon, 90 Ill. 245; Davis v. Demming, 12 W. Va. 246; Smith v. Crosby, 47 Wis. 160; Freeman v. Wilson, 51 Miss. 329; Price v. Karnes, 59 Ill. 276; Henley v. Hotaling, 41 Cal. 22; Horn v. Keteltas, 46 N. Y. 605; Klinck v. Price, 4 W. Va. 4; 6 Am. Rep. 268. It is held in Price v. Karnes and Henley v. Hotaling, *supra*, that where the writings do not show on their face the existing relation of debtor and creditor, but appear to be absolute, the evidence, in order to es-

tablish their character as a mortgage, must be clear, unequivocal, and convincing. This ruling seems to be inconsistent with the doctrine that in case of doubt the court will lean strongly in favor of the mortgage. In fact, the tendency of the recent decisions, in some of the states at least, is decidedly opposed to any such doctrine. [For the leaning in favor of the mortgage, see Franklin v. Ayer, 22 Fla. 654, 661; De Bruhl v. Maas, 54 Tex. 464, 472.]

bona fide purchasers for value and without notice. The principle which underlies this doctrine is the fruitful source of many other equitable rules:¹ that it would be a virtual fraud for the grantee to insist upon the deed as an absolute conveyance of the title, which had been intentionally given to him, and which he had knowingly accepted, merely as a security, and therefore in reality as a mortgage. The general doctrine is fully established, and certainly prevails in a great majority of the states, that the grantor and his representatives are always allowed in equity to show, by parol evidence, that a deed absolute on its face was only intended to be a security for the payment of a debt, and thus to be a mortgage, although the parties deliberately and knowingly executed the instrument in its existing form, and without any allegations of fraud, mistake, or accident in its mode of execution. As in the last preceding case, the sure test and the essential requisite are the continued existence of a debt. If there is no indebtedness, the conveyance cannot be a mortgage; if there is a debt existing, and the conveyance was intended to secure its payment, equity will regard and treat the absolute deed as a mortgage. The presumption, of course, arises that the instrument is what it purports on its face to be, an absolute conveyance of the land; to overcome this presumption, and to establish its character as a mortgage, the cases all agree that the evidence must be clear, unequivocal, and convincing, for otherwise the natural presumption will prevail.² Whenever a deed ab-

¹ Among others, of the familiar doctrine concerning the specific performance of verbal contracts for the sale of land which have been part performed. The principle, in its broadest generality, prohibits statutes and legal rules designed to prevent fraud from being so used as to produce equitable fraud.

² There are some decisions which limit the operation of this doctrine, even in equity, to cases where the absolute form of the conveyance is the result of fraud, mistake, or accident.

This narrow view seems to have resulted from an erroneous conception of the principle upon which the doctrine rests; the equitable notion of fraud in the grantee's insisting upon the conveyance as absolute, when it was given and accepted only as a security, is carried back to the inception of the instrument, and is improperly made to involve the existence of fraud in the very execution of the deed. The doctrine as stated in the text is followed by nearly if not quite all the recent decisions: *Maxwell v.*

absolute on its face is thus treated as a mortgage, the parties are clothed with all the rights, are subject to all the lia-

Lady Mountacute, Prec. Ch. 526; Cotterell v. Purchase, Cas. t. Talb. 61; Walker v. Walker, 2 Atk. 98; Young v. Peachy, 2 Atk. 254, 257; Joynes v. Statham, 3 Atk. 338; Spurgeon v. Collier, 1 Eden, 55; Dixon v. Parker, 2 Ves. Sr. 219, 225; Holmes v. Mathews, 9 Moore P. C. C. 413; Barnhart v. Greenshields, 9 Moore P. C. C. 18; Langton v. Horton, 5 Beav. 9; Douglas v. Culverwell, 3 Giff. 251; Pugh v. Davis, 96 U. S. 332; Andrews v. Hyde, 3 Cliff. 516; Amory v. Lawrence, 3 Cliff. 523; Villa v. Rodriguez, 12 Wall. 323; Morgan's Assignees v. Shinn, 15 Wall. 105; Russell v. Southard, 12 How. 139; Babcock v. Wyman, 19 How. 289; Stinchfield v. Milliken, 71 Me. 567; Wing v. Cooper, 37 Vt. 169; Campbell v. Dearborn, 109 Mass. 130; 12 Am. Rep. 671; French v. Burns, 35 Conn. 359; Odell v. Montross, 68 N. Y. 499; Morris v. Budlong, 78 N. Y. 543, 552; Carr v. Carr, 52 N. Y. 251; Horn v. Keteltas, 46 N. Y. 605; Brown v. Clifford, 7 Lans. 46; Marvin v. Prentice, 49 How. Pr. 385; Budd v. Van Orden, 33 N. J. Eq. 143; Judge v. Reese, 24 N. J. Eq. 387; Kline v. McGuekin, 24 N. J. Eq. 411; Sweet v. Parker, 22 N. J. Eq. 453; Crane v. Decamp, 21 N. J. Eq. 414; Danzeisen's Appeal, 73 Pa. St. 65; Sweetzer's Appeal, 71 Pa. St. 264; Fessler's Appeal, 75 Pa. St. 483; Plumer v. Guthrie, 76 Pa. St. 441, 455; Olenbaugh v. Bradford, 67 Pa. St. 96; McGinity v. McGinity, 63 Pa. St. 38, 45; Baugher v. Merryman, 32 Md. 185; Snively v. Pickle, 29 Gratt. 27; Gulley v. Macy, 84 N. C. 434; Carter v. Hallahan, 61 Ga. 314; Phillips v. Croft, 42 Ala. 477; Klein v. McNamara, 54 Miss. 90; Littlewort v. Davis, 50 Miss. 403; Nichols v. Cabe, 3 Head, 92; Barnard v. Jennison, 27 Mich. 230; Emerson v. Atwater, 7 Mich. 12; Smith v. Brand, 64 Ind. 427; Graham v. Graham, 55 Ind. 23; Butcher v. Stultz, 60 Ind. 170 (actual fraud); Wright v. Gay, 101 Ill. 233; Bartling v. Brasuhn, 102 Ill. 441; Hancock v. Harper, 86 Ill. 445; Klock v. Walter, 70 Ill. 416; Smith v. Cremer, 71 Ill. 185; Ruckman v. Alwood, 71 Ill. 155; Magnusson v. Johnson, 73 Ill. 156; Wilson v. Mc-

Dowell, 78 Ill. 514; Shays v. Norton, 48 Ill. 100; Lindauer v. Cummings, 57 Ill. 195, 200; Wells v. Somers, 4 Ill. App. 297; Butler v. Butler, 46 Wis. 430; Wilcox v. Bates, 26 Wis. 465; Zuver v. Lyons, 40 Iowa, 510; Roberts v. McMahan, 4 G. Greene, 34; Weide v. Gehl, 21 Minn. 449; O'Neill v. Capelle, 62 Mo. 202; Moore v. Wade, 8 Kan. 380; Whitsett v. Kershow, 4 Col. 419; Pierce v. Traver, 13 Nev. 526; Montgomery v. Spect, 55 Cal. 352; Kuhn v. Rumpp, 46 Cal. 299; Raynor v. Lyons, 37 Cal. 452; Vance v. Lincoln, 38 Cal. 586; Pierce v. Robinson, 13 Cal. 116. [See also Coyle v. Davis, 116 U. S. 109; Cadman v. Peter, 118 U. S. 73; Satterfield v. Malone, 35 Fed. Rep. 445; Randall v. Sanders, 87 N. Y. 578; Knapp v. Bailey, 79 Me. 201; Cullen v. Carey, 146 Mass. 50; Cake v. Shull, 45 N. J. Eq. 208; Gaines v. Brockerhoff, 136 Pa. St. 175; Fisher v. Witham, 132 Pa. St. 488; Edwards v. Wall, 79 Va. 321; Vangilder v. Hoffman, 22 W. Va. 1; Waters v. Crabtree, 105 N. C. 394; Hodge v. Weeks, 31 S. C. 276; Pope v. Marshall, 78 Ga. 635; Franklin v. Ayer, 22 Fla. 654; Harman v. May, 40 Ark. 146; Calhoun v. Lumpkin, 60 Tex. 188; Seiler v. Northern Bank, 86 Ky. 123; Millan v. Bissell, 63 Mich. 66; Rogers v. Beach, 115 Ind. 413; Helen v. Boyd, 124 Ill. 370; Swift v. Lumber Co., 71 Wis. 482; Sloan v. Becker, 34 Minn. 491; Ensminger v. Ensminger, 75 Iowa, 89; 9 Am. St. Rep. 462; Hargadine v. Henderson, 97 Mo. 375; Winston v. Burnell, 44 Kan. 367; 21 Am. St. Rep. 289; Armor v. Spalling, 14 Col. 302; Stephens v. Allen, 11 Or. 188; Husheon v. Husheon, 71 Cal. 412.]

It is held, however, that the deed conveys the legal title to the grantee therein: Hughes v. Davis, 40 Cal. 117; Espinosa v. Gregory, 40 Cal. 58; [Groves v. Williams, 69 Ga. 614; but see *contra*, Healy v. O'Brien, 66 Cal. 519; Raynor v. Drew, 72 Cal. 307; Booth v. Hoskins, 75 Cal. 271; Hall v. Arnott, 80 Cal. 345;] and therefore the right of redemption is cut off by a conveyance from the grantee to a *bona fide* purchaser for value and with-

bilities, and are entitled to all the remedies of ordinary mortgagors and mortgagees. The grantee may maintain an action for the foreclosure of the grantor's equity of redemption; the grantor may maintain an action to redeem and to compel a reconveyance upon his payment of the debt secured. If the grantee goes into possession, he is in reality a mortgagee in possession, and as such is liable to account for the rents and profits.¹

§ 1197. **Mortgages to Secure Future Advances.**—Whatever disinclination may at any time have been felt by courts to sustain this kind of security, it is now well settled that mortgages given in good faith to secure future advances, either in addition to or without a present indebtedness, are valid and binding between the parties. When no claims of subsequent encumbrancers or purchasers have intervened, there is no longer any doubt that the mortgagee can enforce the security for all the sums which he has advanced to the mortgagor, under the mortgage and within its scope, both when such advances were optional on his part, and when he was bound to make them by some collateral agreement with the mortgagor. If the advances were actually made within the scope of the mortgage, the fact that they were originally optional or obligatory would be wholly immaterial between the parties themselves.² The fact that the mort-

out notice,—he holds the land free from the equity: *Brophy Min. Co. v. Brophy and Dale Min. Co.*, 15 Nev. 101; [see also *Pancake v. Cauffman*, 114 Pa. St. 113; *Frink v. Adams*, 36 N. J. Eq. 485;] but the right still continues against a purchaser from the grantee with notice: *Graham v. Graham*, 55 Ind. 23.

The doctrine of the text is applied under every variety of circumstances where the essential fact exists. If the vendee in a contract for the sale of land assigns the contract to A, as security for a debt which he owes to A, and this assignee afterwards fulfills the contract, and receives an absolute deed of the land from the vendor, such deed is still a mortgage as between the

grantee, A, and the original vendee: *Carr v. Carr*, 52 N. Y. 251; *Smith v. Cremer*, 71 Ill. 185. [See also *McPherson v. Hayward*, 81 Me. 329; but see *Moseley v. Moseley*, 86 Ala. 289.]

¹ It has been held, however, that his liability to account under these circumstances is not so stringent and severe as that of the ordinary mortgagee in possession: See *Barnard v. Jennison*, 27 Mich. 230; [*De Cazara v. Oreña*, 80 Cal. 132.]

² *Gordon v. Graham*, 2 Eq. Cas. Abr. 598, pl. 16; 7 Vin. Abr. 52, pl. 3; *Shaw v. Neale*, 20 Beav. 157; 6 H. L. Cas. 581, 608; *Hopkinson v. Rolt*, 9 H. L. Cas. 514; *Daun v. City of London Brewing Co.*, L. R. 8 Eq. 155; *Meuzies v. Lightfoot*, L. R. 11 Eq. 459;

gage is given to secure future advances need not appear on the face of the instrument itself. If it purports to secure the payment of a specified amount, the mortgage need not express the intention or agreement of the parties that this amount of indebtedness is to be made up wholly or in part by future advances; the agreement to that effect may be entirely verbal.¹ More definiteness and certainty,

Young v. Young, L. R. 3 Eq. 801; Calisher v. Forbes, L. R. 7 Ch. 109; Shirras v. Caig, 7 Cranch, 34; United States v. Hooe, 3 Cranch, 73; Scheulenburg v. Martin, 1 McCrary, 348; Lawrence v. Tucker, 23 How. 14; Kansas Valley Bank v. Rowell, 2 Dill. 371; Miller v. Whittier, 36 Me. 577; McDaniels v. Colvin, 16 Vt. 300; 42 Am. Dec. 512; Seymour v. Darrow, 31 Vt. 122; Goddard v. Sawyer, 9 Allen, 78; Joslyn v. Wyman, 5 Allen, 62; Boswell v. Goodwin, 31 Conn. 74; 81 Am. Dec. 169; Pettibone v. Griswold, 4 Conn. 158; 10 Am. Dec. 106; Hubbard v. Savage, 8 Conn. 215; Ackerman v. Hunsicker, 85 N. Y. 43; 39 Am. Rep. 621; Babcock v. Bridge, 29 Barb. 427; Murray v. Barney, 34 Barb. 336; Lansing v. Woodworth, 1 Sand. Ch. 43; Barry v. Merchants' Exch. Co., 1 Sand. Ch. 280; Goodhue v. Berrien, 2 Sand. Ch. 630; Holt v. Creamer, 34 N. J. Eq. 181; Farnum v. Burnett, 21 N. J. Eq. 87; Taylor v. Cornelius, 60 Pa. St. 187; Moroney's Appeal, 24 Pa. St. 372; Bank of Commerce's Appeal, 44 Pa. St. 423; Brooks v. Lester, 36 Md. 65; Wilson v. Russell, 13 Md. 494; 71 Am. Dec. 645; Alexandria Sav. Inst. v. Thomas, 29 Gratt. 483; McCarty v. Chalfant, 14 W. Va. 531; Moore v. Ragland, 74 N. C. 343; Allen v. Lathrop, 46 Ga. 133; Forsyth v. Preer, 62 Ala. 443; Meeker v. Clinton etc. R. R., 2 La. Ann. 971; Klein v. Glass, 53 Tex. 37; Brewster v. Clamfit, 33 Ark. 72; Kramer v. Farmers' etc. Bank, 15 Ohio, 253; Michigan Ins. Co. v. Brown, 11 Mich. 265; Ladue v. Detroit etc. R. R., 13 Mich. 380; 87 Am. Dec. 759; Brackett v. Sears, 15 Mich. 244; Foster v. Reynolds, 38 Mo. 553; Hendrix v. Gore, 8 Or. 406; Tully v. Harloe, 35 Cal. 302; 95 Am. Dec. 102. [See also Jones v. Guaranty Co., 101 U. S. 625; Simons v. First Nat. Bank, 93 N. Y. 269; Evans v. Loughton, 69 Wis. 138; Madigan v. Mead, 31 Minn. 94;

Keyes v. Bump, 59 Vt. 391.] In New Hampshire such mortgages appear to be prohibited by statute, although valid so far as given to secure a present indebtedness: See Johnson v. Richardson, 38 N. H. 353; New Hampshire Bank v. Willard, 10 N. H. 210; Leeds v. Cameron, 3 Sum. 488. For a full discussion of the questions arising from these mortgages, see 1 Jones on Mortgages, secs. 364-378.

¹ Griffin v. New Jersey Oil Co., 11 N. J. Eq. 49; Bell v. Fleming's Ex'rs, 12 N. J. Eq. 13; Craig v. Tappin, 2 Sand. Ch. 78; Hall v. Crouse, 13 Hun, 557; Bank of Utica v. Finch, 3 Barb. Ch. 293; Foster v. Reynolds, 38 Mo. 553; Forsyth v. Preer, 62 Ala. 443; Hendrix v. Gore, 8 Or. 406. While the rule of the text is operative between the parties, more definiteness and certainty in the mortgage are needed, so that it may operate by recording as a constructive notice to subsequent purchasers and encumbrancers of the rights of the mortgagee. Thus a subsequent verbal agreement that subsequent advances should be covered by the mortgage is inoperative: Johnson v. Anderson, 30 Ark. 745; and where the mortgage specified the time within which the future advances should be made, advances made after that time were held not to be secured by it: Miller v. Whittier, 36 Me. 577. A mortgage, to be operative against subsequent purchasers or encumbrancers, should certainly specify the total or maximum amount of the indebtedness it is intended to secure: Youngs v. Wilson, 24 Barb. 510; and it may well be doubted whether any mortgage which simply purports on its face to be given for a single specified sum, described as an absolute debt, can be a valid security for future advances as against subsequent claimants who are only affected by the constructive notice created by its record: North v.

however, are necessary to render the mortgage operative against subsequent purchasers and encumbrancers.

§ 1198. **The Same. As against Subsequent Encumbrancers or Purchasers.** — As such a mortgage is a valid security between the parties, it is plainly an equally valid and effective security, and gives the holder thereof a prior lien, against subsequent purchasers and encumbrancers, for all advances made *before* the execution of the subsequent conveyances or mortgages by the mortgagor, or the docketing of the subsequent judgments against him. The only real question to be considered relates to the validity of the mortgage as a security for advances made *after* the execution or recording of a subsequent mortgage by, or the docketing of a subsequent judgment against, the mortgagor; and in answering this question, there is, to some extent, a direct conflict of opinion among the American decisions. It may be regarded as established that where a mortgage has been given to secure future advances, and advances are made in pursuance thereof *after* the execution or recording of a subsequent mortgage or the docketing of a subsequent judgment, but without any notice to the mortgagee of such subsequent encumbrance, upon the general principles of equity, independently of the recording acts, the subsequent encumbrancer can claim no preference for his own security; in other words, the first mortgage remains prior in effect, as it is prior in time.¹

Belden, 13 Conn. 376; 35 Am. Dec. 83. This case lays down a rule which seems to be sound, that to render a mortgage for future advances valid as against creditors, etc., of the mortgagor, the real nature of the transaction, so far as can be disclosed, must appear on the record with reasonable certainty, or at least the record must point out a track to ascertain it: See 1 Jones on Mortgages, secs. 374, 375; [Bullock v. Battenhausen, 103 Ill. 28. It is held, however, in Tapia v. Demartini, 77 Cal. 383, 386, 11 Am. St. Rep. 288, that this is not necessary to its validity, if the amount of

liability to be incurred under it is expressly limited. See also Simons v. First Nat. Bank, 93 N. Y. 269.]

¹In the very recent case of Ackerman v. Hunsicker, 85 N. Y. 43, 47, 39 Am. Rep. 621, Andrews, J., clearly shows the correctness of this conclusion, *upon principle*, as follows: "It is equally clear that to prefer an intervening encumbrance over the claim of the plaintiff would violate the understanding of the parties to the mortgage at the time it was executed; for the plain intention was, that the interest of the mortgagor in the land, as it existed when the mortgage was

§ 1199. The Same. As Affected by the Recording Acts.

— The general doctrine being thus established that the mortgage constitutes a prior lien for all advances made in pursuance thereof before notice of a subsequent encumbrance or conveyance, the effect of the recording acts remains to be considered. It is at this point that the diversity of opinion among the American courts has chiefly arisen. The following conclusions seem to be in harmony with established principles, and to be sustained by the weight of authority; and they may be regarded, I think, as furnishing the prevailing rule: When a mort-

given, should be bound as security for all liabilities which the plaintiff might incur as indorser upon the faith of the mortgage. It would have been a clear breach of good faith on the part of the mortgagor if he had, without notice to the mortgagee, voluntarily encumbered the land by liens having priority of the mortgage, and then applied to the plaintiff for and procured further indorsements." Furthermore, it is a well-settled doctrine of equity that an *executory agreement* to charge a specified parcel of land with a lien does create an equitable lien on such land, which will be enforced not only against the parties, but also against all persons who acquire subsequent interest in the land *with notice* of the agreement; and the effects of the constructive notice by recording are generally as broad as those of actual notice. The general doctrine of the text is fully sustained by authority. In *Gordon v. Graham*, 2 Eq. Abr. Cas. 598, pl. 16, 7 Vin. Abr. 52, pl. 3, Lord Chancellor Cowper is reported to have held that in such a mortgage, the first mortgagee had a prior lien, not only for the advances made before the execution of a second mortgage, but also for the further advances which he made *after receiving notice of such second mortgage*. The correctness of this latter ruling was doubted, although the question was not definitely decided, in *Shaw v. Neale*, 20 Beav. 157; 6 H. L. Cas. 581, 608. In *Hopkinson v. Rolt*, 9 H. L. Cas. 514, 25 Beav. 461, the house of lords, by a majority decision (Lords Campbell and Chelmsford), overruled *Gordon v. Graham*, and held that the

first mortgagee is not entitled to priority of lien for the advances which he made after receiving notice of the second mortgage. Lord Cranworth dissented, and maintained the correctness of Lord Chancellor Cowper's entire ruling. The whole court, however, distinctly recognized and affirmed the doctrine as stated in the text, that the first mortgagee retains a prior lien for all advances made after the second mortgage, but without notice thereof. [To the same effect are the cases *London etc. Banking Co. v. Ratcliffe*, 6 App. Cas. (H. L.) 722, and *Bradford Banking Co. v. Briggs*, 12 App. Cas. (H. L.) 29, reversing 31 Ch. Div. 19, and restoring 29 Ch. Div. 149.] The leading case in this country is *Shirras v. Caig*, 7 Cranch, 34, which was decided, like these English cases, upon the general principles of equity, without reference to the recording statutes. The mortgagees had made advances after a conveyance of the land to the defendants, but without notice of such conveyance. The supreme court held that the mortgage created a valid lien upon the land against the defendants as a security for such advances. Chief Justice Marshall said that the mortgage was security for "the payment of debts still remaining due to them, which were either due at the date of the mortgage or were afterwards contracted upon its faith, either by advances actually made or incurred prior to the receipt of actual notice of the subsequent title of the defendants." See also the cases cited *ante*, under § 1197.

gage to secure future advances reasonably states the purposes for which it is given, its record is a constructive notice to subsequent purchasers and encumbrancers; they are thereby put upon an inquiry to ascertain what advances or liabilities have been made or incurred. The record of a subsequent mortgage or conveyance, or the docketing of a subsequent judgment, is not a constructive notice of its existence to such prior mortgagee. The prior mortgage, therefore, duly recorded, has a preference over subsequent recorded mortgages or conveyances, or subsequent docketed judgments, not only for advances previously made, but also for advances made after their recording or docketing without notice thereof. As the record of the second encumbrance does not operate as a constructive notice, it requires an actual notice to cut off the lien of the prior mortgage; and the subsequent encumbrancer may, by giving actual notice, at any time prevent further advances from being made to his own prejudice.¹ There is a group of decisions which adopt a

¹ The courts which adopted this rule apply it alike, whether the advances were optional or obligatory: *Ackerman v. Hunsicker*, 85 N. Y. 43; 59 Am. Rep. 621 (overruling the contrary *dicta* in *Brinkerhoff v. Marvin*, 5 Johns. Ch. 320; *Lansing v. Woodworth*, 1 Sand. Ch. 43; *Barry v. Merch. Exch. Co.*, 1 Sand. Ch. 280; and *Goodhue v. Berrien*, 2 Sand. Ch. 630); *Truscott v. King*, 6 Barb. 346; 6 N. Y. 147; *Robinson v. Williams*, 22 N. Y. 380; *Crane v. Deming*, 7 Conn. 387; *Rowan v. Sharps' Rifle Mfg. Co.*, 29 Conn. 282; *Ward v. Cooke*, 17 N. J. Eq. 93; *Farnum v. Burnett*, 21 N. J. Eq. 87; *Wilson v. Russell*, 13 Md. 494; 71 Am. Dec. 645; *McDaniels v. Colvin*, 16 Vt. 300; 42 Am. Dec. 512; *Brinkmeyer v. Helbling*, 57 Ind. 435; *Brinkmeyer v. Browneller*, 55 Ind. 487; *Lovelace v. Webb*, 62 Ala. 271; *Witezinski v. Everman*, 51 Miss. 841; *Nelson's Heirs v. Boyce*, 7 J. J. Marsh. 401; 23 Am. Dec. 411; *Burdett v. Clay*, 8 B. Mon. 287; *Collins v. Carlisle*, 13 Ill. 254; *Shirras v. Caig*, 7 Cranch, 34; *United States v. Hooe*, 3 Cranch, 73. [See also *Tapia v. Demartini*, 77

Cal. 333; 11 Am. St. Rep. 288; *Williams v. Gilbert*, 37 N. J. Eq. 86; *Sayre v. Hewes*, 32 N. J. Eq. 652; *Simons v. First Nat. Bank*, 93 N. Y. 269.] It is generally held to be necessary, however, in the states where this rule prevails, that the purpose to secure future advances should be sufficiently stated on the face of the first mortgage, so that it may put subsequent encumbrancers upon an inquiry. If the true purpose is not stated at all, or if stated in a too indefinite manner, the advances will not be secured against a subsequent encumbrancer or purchaser; *Balcock v. Bridge*, 29 Barb. 427; *Youngs v. Wilson*, 24 Barb. 510; *North v. Bellden*, 13 Conn. 376; 35 Am. Dec. 83; *Pettibone v. Griswold*, 4 Conn. 158; 10 Am. Rep. 106. [See, however, *Tapia v. Demartini*, 77 Cal. 333; 11 Am. St. Rep. 288.] The decision in *Craig v. Tappin*, 2 Sand. Ch. 78, can only be sustained on the ground that the mortgagee had received actual notice of the second encumbrance; otherwise it is directly overruled by *Ackerman v. Hunsicker*, *supra*.

different view, an opposite conclusion. They seem to regard the lien for securing future advances as only arising, or at all events as only perfected so as to be available, at and from the time when the advance is actually made. An advance, therefore, although in pursuance of a prior mortgage duly recorded, if made after the record of a subsequent mortgage or conveyance, or the docketing of a subsequent judgment, is affected with constructive notice of such subsequent encumbrance or conveyance, and its lien is consequently postponed to that of the second record. By this rule, a mortgage to secure future advances secures a preference only for those advances actually made before the record of a subsequent encumbrance or conveyance; it loses its precedence for all advances made after such record.¹ The lien of the prior mortgage will, of course, prevail against all subsequent purchasers or encumbrancers whose rights do not attach until after the advances are made, and against all who are not *bona fide* purchasers for value without notice.² A distinction has been made, in some of the cases, between *optional* and *obligatory* advances. Where the advance is optional with the mortgagee, it has been said that the

¹ The fundamental error of this view, in my opinion, consists in its mistaken conception of the nature of an equitable lien, in regarding the lien as arising at and from the *act of making the advance*, instead of from the previous *executory agreement* by which the land was bound as security for the future advances: See *post*, chapter on liens. This rule has been adopted in the following cases: Alexandria Sav. Inst. v. Thomas, 29 Gratt. 483; Bank of Montgomery County's Appeal, 36 Pa. St. 170; Ter-Hoven v. Kerns, 2 Pa. St. 96; Ladue v. Detroit etc. R. R., 13 Mich. 380; 87 Am. Dec. 759 (the opinion of Christiancy, J., gives the ablest presentation of this rule); Spader v. Lawler, 17 Ohio, 371; 49 Am. Dec. 463; Meeker v. Clinton etc. R. R., 2 La. Ann. 971 (this decision is based entirely on the peculiar provisions of the code); Brinkerhoff v. Marvin, 5 Johns. Ch. 320; Lansing v.

Woodworth, 1 Sand. Ch. 43; Barry v. Merch. Exch. Co., 1 Sand. Ch. 280; Goodhue v. Berrien, 2 Sand. Ch. 630; Craig v. Tappin, 2 Sand. Ch. 78 (these cases, so far as they support the rule, have been expressly overruled by the latest New York decision); Griffin v. N. Y. Oil Co., 11 N. J. Eq. 49; Bell v. Fleming's Ex'rs, 12 N. J. Eq. 13 (these two cases seem to be entirely inconsistent with the later decision in Ward v. Cooke, cited in the last preceding note). The question is also discussed, but not decided, in Boswell v. Goodwin, 31 Conn. 74; 81 Am. Dec. 169.

² McCarty v. Chalfant, 14 W. Va. 531; Schulze v. Bolting, 8 Biss. 174 (good against an assignee in bankruptcy); Farnum v. Burnett, 21 N. J. Eq. 87; Lovelace v. Webb, 62 Ala. 271; Kramer v. Farmers' etc. Bank, 15 Ohio, 253; Barry v. Merchants' Exch. Co., 1 Sand. Ch. 280.

lien thereof does not attach until it is actually made; and consequently such an advance made after notice of a second encumbrance loses its preference. Here, again, the decisions are not uniform; some require an *actual* notice in order to cut off the lien even of an optional advance; with others the recording gives a constructive notice which is sufficient.¹ Finally, there are decisions by most able courts which give the prior mortgage to secure future advances an absolute preference; which maintain the mortgagee's supremacy, and preserve the lien of his mortgage against intervening subsequent encumbrances, even for advances made after receiving actual notice of such encumbrances.² This conclusion

¹ *Heintze v. Bentley*, 34 N. J. Eq. 562 (first mortgagee *having knowledge* of a second encumbrance); and see *Ward v. Cooke*, 17 N. J. Eq. 93; *Ripley v. Harris*, 3 Biss. 199 (actual notice); *Boswell v. Goodwin*, 31 Conn. 74; *S1 Am. Dec.* 169 (actual notice); *Frye v. Bank of Illinois*, 11 Ill. 367 (actual notice); *Bank of Montgomery Co.'s Appeal*, 36 Pa. St. 170; *McClure v. Roman*, 52 Pa. St. 453; *Parker v. Jacoby*, 3 Grant Cas. 300 (in these three Pennsylvania cases, constructive notice by recording is held to be sufficient). Notwithstanding the ability of the courts which maintain this view, it seems to me very difficult to perceive on what equitable principle concerning priorities the rights of the second encumbrancer can at all depend upon the fact of the advances being either optional or obligatory. The equities of the second encumbrancer must arise from *his own* position, his own relations with the subject-matter and with the prior parties; it does not seem to be in accordance with settled doctrines of equity that the parties to the prior mortgage should be able to alter the equities of the second encumbrancer by any independent agreement or arrangement between themselves to which he was not a party, and of which he might be completely ignorant.

² Some, though not all, of these decisions emphasize the fact that the advances made after notice of the second encumbrance were obligatory.

In *Witezinski v. Everman*, 51 Miss. 841, it was held, after a very able and full discussion, that where such a mortgage expresses on its face the nature and purposes of the security, and the extent to which the advances may be made, so that the record of it would put parties upon an inquiry and enable them by the use of ordinary diligence to ascertain the material facts, its lien will prevail against subsequent purchasers or encumbrancers for advances made in pursuance of its terms by the mortgagee *after* he had received actual notice of such purchase or encumbrance, as well as for those made before any notice. No distinction was drawn between advances optional and those obligatory. In *Brinkmeyer v. Helbling*, 57 Ind. 435, where a mortgage was given to indemnify the mortgagee against his future indorsements which he had agreed to make up to a certain amount, it was held that his indorsements when made related back, and were secured by the lien of the mortgage against subsequent encumbrances; and since he was bound to make the indorsements, his knowledge of the subsequent encumbrances on the property at the time when he made the indorsements did not affect his rights under the mortgage, and did not postpone the lien thereof; and the case of *Brinkmeyer v. Browneller*, 55 Ind. 487, is substantially to the same effect. In *Rowan v. Sharps' Rifle Mfg. Co.*, 29 Conn. 282, the mortgagee was bound

is based upon the doctrines that the executory agreement of the mortgagee creates a full and perfect lien in equity, effectual against all persons who are charged with notice thereof, and that the record of the mortgage furnishes such a notice affecting all subsequent encumbrances.

§ 1200. **Mortgages to Secure Several Different Notes.**
— In many of the states the mortgage debt is ordinarily evidenced by a promissory note in place of a bond. A special form of security has thus become common in certain parts of this country which is probably unknown in England; the mortgage debt is represented by a series of several distinct promissory notes, often negotiable in form, all bearing the same date, and generally made payable in a successive order at different times, — as, for example, in one, two, three, and four years from date, — and the mortgage expressly secures the payment of these notes according to their respective tenors.¹ While all these notes and the mortgage remain in the hands of the mortgagee, or when they are all assigned with the mortgage to and held by the same person, plainly no questions can arise other than those presented by the ordinary form of mortgage. It is only when the mortgagee assigns the notes separately to different persons, or when he assigns a portion of them and retains the others himself, that the special questions arise which are now to be considered; and these questions relate chiefly to the rights of the respective holders, and to the order of priority among them.

by contract to make advances up to a certain amount; held, that the mortgage created a valid and preferential lien for all advances made before actual notice of a second mortgage; and that after such actual notice was received, the mortgagee still had a right to go on and make all the advances necessary to carry out his contract, and that such advances also took precedence of the second encumbrance. These decisions, it will be seen, reaffirm the ruling of Lord Chancellor Cowper in the early case of *Gordon v.*

Graham; and without entering into any discussion, I would venture to express the opinion that they are based upon the true principle, and formulate the correct doctrine, involved in and derived from the generally accepted construction of the American recording acts.

¹ In the Eastern states, where a bond, instead of a note, is the ordinary evidence of the debt, several separate bonds are sometimes given, payable at different times, each representing a distinct installment of the mortgage debt.

§ 1201. **Rights of Assignees — Order of Priority among Them.**—Where all the notes stand on the same footing,—that is, they are all payable at the same time,—the equities of all the assignees are equal, and there is no preference or priority among them in enforcing the security of the mortgage. All the assignees are entitled to a *pro rata* share of the proceeds of the mortgaged premises, in case there is not sufficient to pay all the notes in full.¹ The notes, however, are commonly made payable at different times, in regular succession, and this condition of fact presents the real difficulty,—a difficulty apparently so great that the courts of various states have reached the most opposite conclusions, and have established several totally unlike rules. Where the notes, payable at different dates, are assigned by the mortgagee to different persons, either at the same or different times, and either with or without an accompanying assignment of the mortgage, the following may be regarded as the *prevailing* general rule determining the right of the respective assignees: Since the assignment of each note is a *pro tanto* assignment of the mortgage, the holders of the successive notes are regarded as being exactly in the situation of holders of successive mortgages upon the same land; their equities as among themselves, and their rights to enforce the security of the mortgage, are not equal; they are entitled to priority in the mortgage security of their respective notes according to the order of time in which such notes become due and payable. The order of maturing among the notes fixes the order of preference and priority among the respective assignees.² Another rule had been

¹ Swartz's Ex'rs v. Leist, 13 Ohio St. 419. This is the rule prevailing in a great majority of the states; in the *very few* states where the priority among the assignees depends *wholly* upon the order of the assignments, it would not, of course, be followed.

² This rule, which is adopted in the greatest number of states and by a large majority of the decisions, seems to be based upon a correct applica-

tion of equitable principles and analogies. The rights of the holders are fixed by what expressly appears upon the face of the writings; the mortgage is a common bond uniting all the notes, and the various assignees have through it a clear notice of each other's rights. The order of the respective *assignments* is thus wholly immaterial upon the rights of priority among the assignees. This rule is sus-

adopted by the courts of several states. Upon the same condition of facts, they hold there is no preference or priority whatever among the various assignees; the terms of their respective assignments, or of the maturing of their notes, are alike immaterial; all the assignees are entitled, as among themselves, to share *pro rata* in the security of the mortgage and in the proceeds of the mortgaged premises, if there is not sufficient to pay all in full.¹

tained by the following cases: *Winters v. Franklin Bank*, 33 Ohio St. 250; *Bank of United States v. Covert*, 13 Ohio, 240; *People's Sav. Bank v. Finney*, 63 Ind. 460; *Doss v. Ditmars*, 70 Ind. 451; *Stanley v. Beatty*, 4 Ind. 134; *Hough v. Osborne*, 7 Ind. 140; *Murdock v. Ford*, 17 Ind. 52; *Davis v. Langsdale*, 41 Ind. 399; *Crouse v. Holman*, 19 Ind. 30; *State Bank v. Tweedy*, 8 Blackf. 447; 46 Am. Dec. 486; *Herrington v. McCollum*, 73 Ill. 476; *Funk v. McReynold's Adm'r's*, 33 Ill. 481; *Koester v. Burke*, 81 Ill. 436; *Vansant v. Allmon*, 23 Ill. 30; *Flower v. Elwood*, 66 Ill. 438; *Gardner v. Diederichs*, 41 Ill. 153; *Walker v. Schreiber*, 47 Iowa, 529; *Grapengether v. Fejervary*, 9 Iowa, 163; 74 Am. Dec. 336; *Rankin v. Major*, 9 Iowa, 297; *Hinds v. Mooers*, 11 Iowa, 211; *Sangster v. Love*, 11 Iowa, 580; *Massie v. Sharpe*, 13 Iowa, 542; *Isett v. Lucas*, 17 Iowa, 503; 85 Am. Dec. 572; *Wood v. Trask*, 7 Wis. 566; 76 Am. Dec. 230; *Marine Bank v. International Bank*, 9 Wis. 57; *Lyman v. Smith*, 21 Wis. 674; *Mitchell v. Ladew*, 36 Mo. 526; 88 Am. Dec. 156; *Thompson v. Field*, 38 Mo. 320; *Ellis v. Lamme*, 42 Mo. 153; *Richardson v. McKim*, 20 Kan. 346; *Gwathmeys v. Ragland*, 1 Rand. 466; *Wilson v. Hayward*, 6 Fla. 171; *Hunt v. Stiles*, 10 N. H. 466; but see *Gilman v. Moody*, 43 N. H. 239; and see also *Phelan v. Olney*, 6 Cal. 478; *Grattan v. Wiggins*, 23 Cal. 16. [See, in support of the rule, *Ayers v. Rivers*, 64 Iowa, 543; *Leavitt v. Reynolds*, 79 Iowa, 348.] For a criticism on this doctrine, see *Granger v. Crouch*, 86 N. Y. 494, 499, per *Finch, J.* If the assignee of a note first maturing delays in enforcing his security, even though the second and other subsequent notes should have become due and payable, his

priority is not thereby lost: *Lyman v. Smith*, 21 Wis. 674; *People's Sav. Bank v. Finney*, 63 Ind. 460 (holder of the first note made a binding agreement with the mortgagor, extending the time of its payment beyond the maturity of the other notes, and his priority was not lost). When a judgment at law has been recovered on a note by its holder, the judgment takes the place of the note in the order of priority under the mortgage: *Funk v. McReynold's Adm'r's*, 33 Ill. 481.

¹ According to this rule, it would be impossible for the holder of a note or notes first maturing to foreclose the mortgage entirely, and by a sale of the premises cut off the rights of the other holders. The rule is sustained by the following cases: *Cooper v. Ulmann*, Walk. Ch. 251; *Wilcox v. Allen*, 36 Mich. 160; *Donley v. Hays*, 17 Serg. & R. 400; *Hancock's Appeal*, 34 Pa. St. 155; *Dixon v. Clayville*, 44 Md. 573; *Chew v. Buchanan*, 30 Md. 367; *Andrews v. Hobgood*, 1 Lea, 693; *Smith v. Cunningham*, 2 Tenn. Ch. 565; *Ewing v. Arthur*, 1 Humph. 537; *Parker v. Mercer*, 6 How. (Miss.) 320; 38 Am. Dec. 438; *Henderson v. Herrod*, 10 Smedes & M. 631; *Bank of England v. Tarleton*, 23 Miss. 173; *Pugh v. Holt*, 27 Miss. 461; *Trustees of Jefferson College v. Prentiss*, 29 Miss. 46; *Adams v. Lear*, 3 La. Ann. 144; *Delespine v. Campbell*, 52 Tex. 4; *Paris Exch. Bank v. Beard*, 49 Tex. 358; *Robertson v. Guerin*, 50 Tex. 317. [See also *Lovell v. Cragin*, 136 U. S. 147; *McLean's Appeal*, 103 Pa. St. 255; *Fourth Nat. Bank's Appeal*, 123 Pa. St. 454; 10 Am. St. Rep. 538; *Penzel v. Brookmire*, 51 Ark. 105; 14 Am. St. Rep. 23; *Wilson v. Eigenbrodt*, 30 Minn. 4; *Hall v. McCormick*, 31 Minn. 280; *Jennings v. Mooroc*, 83 Mich. 231; 21 Am. St. Rep. 601. For the same

In a very few of the states, other still more special rules are adopted in preference to either of these two principal theories.¹ Finally, the operation of these general rules may be controlled and changed by express provisions contained in the mortgage itself.² Such being the doctrines concerning the rights of assignees arising from the terms of the mortgage and notes themselves, it is generally held by courts adopting either of the two principal rules before stated that the mortgagee in assigning a note may, by express agreement with the assignee thereof, change the order of priority or equality which would otherwise exist, and may establish a different order, giving precedence of lien to a note maturing at a later time, and that such agreement would be binding upon any second or subsequent assignees of other notes.³

rule applied to purchase-money notes secured by grantor's lien, either implied or reserved in the deed, see *Aaron v. Warner*, 62 Miss. 370; *Salmon v. Downs*, 55 Tex. 243; *Wooters v. Hollingsworth*, 58 Tex. 374.]

¹According to the first of these rules, when notes maturing at different dates are assigned at different times, the assignees have priority according to the order of the assignments, irrespective of the order of maturing. This peculiar rule is based upon the notion that as between the mortgagee who assigns one note and retains the others, the assignee is entitled to the preference; and the first assignee having thus a priority as against the mortgagee, any subsequent assignee could only succeed to this position of the mortgagee, and so the assignees would all take in the order of their assignments: *Cullum v. Erwin*, 4 Ala. 452; *Nelson v. Dunn*, 15 Ala. 501. [See also *Knight v. Ray*, 75 Ala. 383; *Preston v. Ellington*, 74 Ala. 133 (notes secured by grantor's lien); *Parsons v. Martin*, 86 Ala. 352 (same).] The second of these special rules seems to be confined to certain of the states in which the legal theory of the mortgage still prevails, that it is a conveyance of the legal title, so that it may be transferred without assigning the debt. When the notes or bonds have been assigned to different persons, A, B, C, and D, and the mortgage is

transferred to another, M, and M forecloses and thus acquires the legal title to the land, he holds the land in trust for all the assignees of the notes or bonds in proportion to their various amounts: *Johnson v. Candage*, 31 Me. 28; *Moore v. Ware*, 38 Me. 496; *Bryant v. Damon*, 6 Gray, 564; and see *Gilman v. Moody*, 43 N. H. 239; [*Jordan v. Cheney*, 74 Me. 359.]

²For example, the mortgage may provide that the notes shall have priority of lien in the inverse order of their maturing, — i. e., that the one last to become payable shall have the prior lien, etc.: *Ellis v. Lamme*, 42 Mo. 153. And when the mortgage provides that upon default in payment of any one note, all the notes shall at once become payable, it is generally held that upon the happening of such event the holders of all the notes become entitled to share *pro rata* in the security, the case being then virtually the same as where all the notes are originally payable at once: *Pierce v. Shaw*, 51 Wis. 316; *Bushfield v. Meyer*, 10 Ohio St. 334; *Bank of United States v. Covert*, 13 Ohio, 240. In Missouri, however, it is held that the priority resulting from order of maturity is not changed by such a provision: *Hurek v. Erskine*, 45 Mo. 484; *Mitchell v. Ladew*, 36 Mo. 526; 88 Am. Dec. 156; *Thompson v. Field*, 38 Mo. 320.

³For example, if there were three notes payable in the order No. 1, No.

§ 1202. **Effect of Assigning the Note.**—Wherever the equitable theory of the mortgage is admitted, the assignment of one of the notes by itself, without any accompanying transfer of the mortgage, is an assignment of an interest *pro tanto* in the mortgage. Each assignee is, through the mortgage, charged with notice of the equitable interests of all the other assignees.¹ In the states which adopt the first general rule as given in the preceding paragraph, the assignee of the note first maturing is entitled to foreclose the mortgage and procure the mortgaged premises to be sold, when his note becomes due, and thus to cut off the liens of the other notes. The holders of the others notes, in order to protect their own interests, are entitled to redeem from him, before the final sale, in the order of their various notes.²

§ 1203. **Priority between the Assignee and the Mortgagee.**—Thus far I have spoken of the rights of assignees among themselves, where all or some of the notes

2, and No. 3, and the mortgagee first assigned No. 3 to A, he might agree that it should have priority of lien in A's hands over the other two; and a subsequent assignee of No. 1 would be bound by this agreement. Conversely, on assigning No. 1 to A, the parties might agree that it should not have a prior lien, but should only share *pro rata* with the others: Walker v. Dement, 42 Ill. 272; Noyes v. White, 9 Kan. 640; Ellis v. Lamme, 42 Mo. 153; Bank of England v. Tarleton, 23 Miss. 173; Trustees of Jeff. Coll. v. Prentiss, 29 Miss. 46; Chew v. Buchanan, 30 Md. 367; Grattan v. Wiggins, 23 Cal. 16; Lane v. Davis, 14 Allen, 225; [Solberg v. Wright, 33 Minn. 224.]

¹ If the mortgagee should, therefore, assign a part of the notes to A, and the remaining notes, together with the mortgage itself, to B, B would not acquire any precedence from the fact of his holding the mortgage: Walker v. Schreiber, 47 Iowa, 529; Sargent v. Howe, 21 Ill. 148; Hough v. Osborne, 7 Ind. 140; Anderson v. Baumgartner, 27 Mo. 80; Cullum v. Erwin, 4 Ala. 452; Nelson v. Dunn, 15 Ala. 501; Henderson v. Herrod, 10 Smedes

& M. 631; Gwathmeys v. Ragland, 1 Rand. 466; Phelan v. Olney, 6 Cal. 478; Stevenson v. Black, 1 N. J. Eq. 338; Keyes v. Wood, 21 Vt. 331; Belding v. Manly, 21 Vt. 550; [Wilson v. Eigenbrodt, 30 Minn. 4.]

² If the land was sold in such a case, without making the holders of the other notes parties to the suit, their rights of redemption would still remain; they could redeem from the purchaser. In fact, according to this view, they stand in exactly the same position as subsequent mortgagees: Vansant v. Allmon, 23 Ill. 30; Flower v. Elwood, 66 Ill. 438; Hinds v. Mooers, 11 Iowa, 211; Stanley v. Beatty, 4 Ind. 134; Murdock v. Ford, 17 Ind. 52; Doss v. Ditmars, 70 Ind. 451; Grattan v. Wiggins, 23 Cal. 16. [See also Bank of Napa v. Godfrey, 77 Cal. 612; and see Bridges v. Ballard, 62 Miss. 237.] Where the first of a series of notes is paid by the mortgagor at maturity, the remaining notes of the series are entitled to preference over it, although the mortgagor has attempted to give it a new life by transferring it to another holder: Bailey v. Malvin, 53 Iowa, 371.

have been assigned to various holders; a different principle may operate between an assignee and the mortgagee. When the mortgagee assigns one or more of the notes, and retains the remainder of the series, it is generally held that the assignee is entitled to a priority of lien as against the mortgagee, with respect to the note or notes so transferred; and this rule operates without regard to the order in which the notes held by the two parties mature.¹

¹ For example, if there was a series of three notes, and the mortgagee assigned No. 3, then the assignee, having a priority of lien, would be entitled to have his note paid in full, although it matured last, before the proceeds were applied upon the notes remaining in the mortgagee's hands, whenever the proceeds were insufficient to pay all in full. The mortgagee having transferred the note and received the consideration therefor, it would be inequitable for him to deprive the assignee of any part of its value, by insisting upon a priority or even an equality of right in sharing the insufficient proceeds: *McClintic v. Wise's Adm'rs*, 25 Gratt. 448; 18 Am. Rep. 694; *Stevenson v. Black*, 1 N. J. Eq. 338; *Salzman v. Creditors*, 2 Rob. (La.) 241; *Ventress v. Creditors*, 20 La. Ann. 359; *Waterman v. Hunt*, 2 R. I. 298; *Bryant v. Damon*, 6 Gray, 564; *Warden v. Adams*, 15 Mass. 233; *Cullum v. Erwin*, 4 Ala. 452; *Forwood v. Dehoney*, 5 Bush, 174; *Clowes v. Dickenson*, 5 Johns. Ch. 235; *Van Rensselaer v. Stafford*, Hopk. Ch. 569; *Pattison v. Hull*, 9 Cow. 747; *Mechanics' Bank v. Bank of Niagara*, 9 Wend. 410; [*Preston v. Ellington*, 74 Ala. 133 (grantor's lien); *Parsons v. Martin*, 86 Ala. 352 (same); *Knight v. Ray*, 75 Ala. 383.] But the following cases hold that they both share ratably: *Donley v. Hays*, 17 Serg. & R. 400; *Dixon v. Clayville*, 44 Md. 573; *McClanahan v. Chambers*, 1 Mon. 43; and see *Belding v. Manly*, 21 Vt. 550; [*Salmon v. Downs*, 55 Tex. 243 (grantor's lien); *Wooters v. Hollingsworth*, 58 Tex. 374 (same).]

SECTION IV.

INTERESTS, RIGHTS, AND LIABILITIES OF THE MORTGAGOR
AND OF THE MORTGAGEE.

ANALYSIS.

- § 1204. General interests of the mortgagor and the mortgagee.
- §§ 1205-1208. I. Conveyance by the mortgagor.
 - § 1205. Conveyance "subject to" the mortgage; effect of.
 - § 1206. Grantee "assumes" the mortgage; effect of.
 - § 1207. *Rationale* of the grantee's liability.
 - § 1208. Assumption by a mortgagee.
- §§ 1209-1214. II. Assignment of the mortgage.
 - § 1209. Assignment at law and in equity.
 - § 1210. Assignment of the debt is, in equity, an assignment of the mortgage; what operates as such assignment.
 - § 1211. Equitable assignment by subrogation.
 - § 1212. In whose favor such equitable assignment exists.
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 - § 1214. Right to compel an actual assignment.
- §§ 1215-1218. III. Rights and liabilities of mortgagee in possession.
 - § 1215. To whom the doctrine applies in different states.
 - § 1216. With what he is chargeable; rents and profits, willful default.
 - § 1217. His allowances and credits, disbursements, repairs, improvements, compensation.
 - § 1218. Liability to account.
- §§ 1219-1226. IV. Redemption from the mortgage.
 - § 1219. By the mortgagor; suit to redeem.
 - § 1220. By other persons.
- §§ 1221-1226. Rights of contribution and of exoneration upon redemption.
 - § 1221. General doctrine; classes of cases; equities equal or unequal.
 - § 1222. 1. Where their equities are equal; titles simultaneous.
 - § 1223. 2. Where their equities are unequal, although the titles are simultaneous; tenants for life or for years and remaindermen; dowress and reversioner.
 - § 1224. 3. Inequality of equities where titles are not simultaneous; between mortgagor and his grantee of a parcel; between successive grantees; inverse order of alienation.
 - § 1225. The same; what circumstances disturb these equities and defeat this rule.
 - § 1226. 4. A release by the mortgagee of one or more parcels.
- § 1227. V. Foreclosure; foreclosure proper or "strict foreclosure."
- § 1228. Foreclosure by judicial sale.

§ 1204. General Interests of Mortgagor and Mortgagee.

— The doctrines which prevail in this country concern-

ing the respective interests of the mortgagor and the mortgagee, and their ordinary rights which arise therefrom, have been explained in the preceding section II. of the present chapter. In equity, the mortgagor's interest continues to be the substantial ownership of the land, subject only to the lien of the mortgage; and in those states where the purely equitable theory has been adopted this ownership is the legal estate; in the others it is equitable, — the equity of redemption. A mortgagor may therefore deal with the land in any lawful manner, subject only to the lien which affects it through all of his subsequent dealings and in all of its subsequent relations. Among the necessary incidents of the mortgagor's ownership are the following: Upon his death intestate, the land, if owned in fee, descends to his heirs; he may devise it by will, and it is subject to dower and to curtesy in all the states where these life estates are preserved. It is generally liable to be levied on and sold on execution issued upon a judgment against the mortgagor.¹ In all the states the mortgagor is entitled to possession against third persons; and in all the states which have adopted the purely equitable theory, he is entitled to possession against the mortgagee and those claiming under him, until the time when a foreclosure sale has been finally consummated. While in possession,

¹ To this liability there is one most important exception. It is the prevailing rule — in some states based upon statute — that where the mortgagee, or other holder of the mortgage, elects to sue at law on the mortgage debt, and recovers a personal judgment against the mortgagor, he cannot, by his execution, levy on and sell the very land itself which is covered by the mortgage, but must satisfy his judgment out of other property (if any) of the mortgagor. The reasons of this rule are obviously just. If the mortgaged land was sold on such a judgment, the purchaser would take it *still encumbered* by the mortgage; it would not, therefore, sell for its fair value, and thus the mortgagor's prop-

erty would be unjustly sacrificed. Furthermore, since the mortgagee had a *specific* lien on the particular tract by his mortgage, he ought not, in equity and justice, to obtain and enforce a *general* lien by judgment upon the very same tract: See *Palmer v. Foote*, 7 Paige, 437; *Atkins v. Sawyer*, 1 Pick. 351; 11 Am. Dec. 188; *Washburn v. Goodwin*, 17 Pick. 137; *Powell v. Williams*, 14 Ala. 476; 48 Am. Dec. 105; *Barker v. Bell*, 37 Ala. 354, 358; *Baldwin v. Jenkins*, 23 Miss. 206; *Thornton v. Pigg*, 24 Mo. 249; *per contra*, *Freeby v. Tupper*, 15 Ohio, 467; and see *Trimm v. Marsh*, 54 N. Y. 599; 13 Am. Rep. 623; and Cal. Code Civ. Proc., sec. 726.

according to either theory he may use the premises in any reasonable manner, and is not accountable to the mortgagee for the rents, profits, and income during such possession.¹ The interest of the mortgagee, in equity, is simply a lien, a thing in action, a mere adjunct or accessory of the debt. It is entirely personal assets, and on his death passes to his executors or administrators, may be bequeathed by will, and is not subject to dower or curtesy. Like other things in action, it is liable to be reached by the creditors of the mortgagee, and may be pledged by him, or given as collateral security for an indebtedness. In fact, the relation of the mortgagee to the mortgagor is purely a conventional one, and not fiduciary. The mortgage is a mere security for a debt, and imposes no duty upon the mortgagee to protect the interests of the mortgagor, unless there is some special covenant creating such a duty.²

§ 1205. **I. Conveyance by the Mortgagor Subject to the Mortgage.**—The mortgagor can convey the entire mortgaged premises to a single grantee; or he can con-

¹ In very special cases the mortgagor may be restrained from committing waste and thereby endangering the security.

² *Cornell v. Woodruff*, 77 N. Y. 203, 206, per Rapallo, J. This case holds that there is no such relation of trust between the mortgagee and the mortgagor as prevents the former from acquiring an adverse claim to or lien upon the mortgaged premises, and enforcing the same with like effect as any stranger could. [Whether a mortgagee or his assignee out of possession can become a purchaser at a tax sale of the mortgaged premises, with the same effect as against the mortgagor and other mortgagees as if he were a stranger to the estate, is a question on which the authorities are in conflict: See *Hall v. Westcott*, 15 R. I. 373, and cases cited.]

My limits do not permit any fuller discussion of the doctrines stated in the above *résumé*. Authorities bearing on them for nearly every state will be found in the preceding section II., and for a complete treatment the

reader is referred to Mr. Jones's work on mortgages. In the remainder of this section I purpose to examine, in a general manner, certain special but most important doctrines, the nature and application of which are peculiarly equitable, involving broad equitable principles, which frequently come before the American courts in dealing with mortgages. These are the following: Conveyance by the mortgagor, and especially when the grantee assumes the mortgage; assignment of the mortgage, and especially when and in whose favor an equitable assignment takes place; the rights and liabilities of the mortgagee in possession; redemption by the mortgagor and by other persons, and the rights of subrogation and of contribution thence arising; the various modes of foreclosure. In dealing with these topics, I am necessarily confined to a statement of the more general principles, doctrines, and rules, and must refer to Mr. Jones and other writers for an exhaustive treatment.

vey them in parcels to different grantees simultaneously or successively; or he can convey a portion and retain the residue. Where the mortgagor conveys by a deed absolutely silent with respect to an outstanding mortgage, the grantee, of course, takes the land encumbered by the mortgage, if he has actual notice of it, or constructive notice by record or otherwise.¹ Where a mortgagor conveys by a deed which states simply that the conveyance is "subject to" a certain specified mortgage, or words to that effect, the grantee takes the land burdened with the lien. As between himself and the grantor-mortgagor, the land is the primary fund out of which the mortgage debt should be paid; he cannot claim that the mortgagor should pay off the mortgage and thus exonerate the land.² He does not, however, become personally liable for the mortgage debt, but the mortgagor remains personally liable for any deficiency arising upon a foreclosure sale of the land.³ A grantee who thus takes a

¹ See *Boxheimer v. Gunn*, 24 Mich. 372. Where the mortgage is unrecorded, the subsequent grantee may, by means of a prior record, under the operation of the recording acts, obtain a title free from the lien of the mortgage as a *bona fide* purchaser for value and without notice. [It is held in *Wadsworth v. Lyon*, 93 N. Y. 201, 45 Am. Rep. 190, that when the land is conveyed by deed silent with respect to the mortgage, and the mortgage debt is not part of the purchase price, the grantor remains the principal debtor, and the land is simply security; that the primary liability of the mortgagor to pay the debt cannot be shifted to the land, save by a conveyance thereof subject to its payment, or by deducting the amount from the consideration for the conveyance, or by some agreement between the parties changing such liability.]

² *Johnson v. Zink*, 51 N. Y. 333; *Mathews v. Aikin*, 1 N. Y. 595; *Harris v. Jex*, 66 Barb. 232; *Cherry v. Monroe*, 2 Barb. Ch. 618; *Russell v. Allen*, 10 Paige, 249; *Vanderkemp v. Shelton*, 11 Paige, 28; *Brewer v. Staples*, 3 Sand. Ch. 579; *Cleveland v. Southard*, 25 Wis. 479; *Sweetzer v.*

Jones, 35 Vt. 317; 82 Am. Dec. 639; *Stevens v. Church*, 41 Conn. 369; *Shuler v. Hardin*, 25 Ind. 386. [See also *Wilbur v. Warren*, 104 N. Y. 192; *Drury v. Holden*, 121 Ill. 130.] The grantee cannot, as against the mortgagor, destroy the lien of the mortgage by a mere tender: *Harris v. Jex*, *supra*; nor as between himself and the mortgagor is he a surety with any of the rights belonging to a surety: *Brewer v. Staples*, *supra*; *Stevens v. Church*, *supra*; *Maher v. Lanfrom*, 86 Ill. 513; as to the rights of the mortgagor, see *Johnson v. Zink*, 51 N. Y. 333; [to the extent of the value of the land his relation to his grantee is that of surety towards the principal debtor, and to that extent he is discharged by a valid agreement, without his knowledge, between the creditor and the grantee, for the extension of the time of payment: *Murray v. Marshall*, 94 N. Y. 611; *Spencer v. Spencer*, 95 N. Y. 353;] also *ante*, §§ 797, 798, and cases cited in notes.

³ *Binsse v. Paige*, 1 Abb. App. 138; *Belmont v. Coman*, 22 N. Y. 438; 73 Am. Dec. 213; *Tichenor v. Dodd*, 4 N. J. Eq. 454; *Cleveland v. Southard*, 25 Wis. 479; *Johnson v. Monell*, 13 Iowa,

conveyance subject to a mortgage is presumed to have included the mortgage debt in the purchase price, and is not, therefore, permitted to dispute the validity of the mortgage; in this respect he is in the same position as one who expressly assumes the mortgage.¹

§ 1206. **The Same. Grantee Assumes the Mortgage.**—The mortgagor may not only convey the premises “subject to” the mortgage; he may also convey them in such a manner that the grantee assumes the payment of the mortgage debt, and thus renders himself personally liable therefor. The element which lies at the bottom of such assumption, and which alone gives it efficacy according to the theory held by some courts, is the fact that the mortgage debt is included in the purchase price as a constituent part thereof, and the grantee actually pays or secures to his grantor only the balance of the gross price after deducting such debt. No particular form of words is necessary to create a binding assumption; it is sufficient that the language shows unequivocally an in-

300; and see *ante*, § 797, cases cited in note. [See also *Elliott v. Sackett*, 108 U. S. 140; *Shepherd v. May*, 115 U. S. 505; *Bennett v. Bates*, 94 N. Y. 354.]

¹ *Maier v. Lanfrom*, 86 Ill. 513; *Freeman v. Auld*, 44 N. Y. 50; 37 Barb. 587; *Hardin v. Hyde*, 40 Barb. 435; *Fuller v. Hunt*, 48 Iowa, 163; *Green v. Turner*, 38 Iowa, 112; *Greither v. Alexander*, 15 Iowa, 470; and see cases cited *ante*, in note under § 937. [See also *Johnson v. Thompson*, 129 Mass. 398; *Washington etc. R. R. v. Cazenove*, 83 Va. 744.] In the absence of covenants in the deed having a different effect, it is presumed that the grantee actually paid the value of the land, less the mortgage debt, so that it is his equitable duty to pay off the mortgage: *Shuler v. Hardin*, 25 Ind. 386; and if he *does* pay it, he does not thereby acquire any claim, by way of set-off or otherwise, against his grantor: *Ather-ton v. Toney*, 43 Ind. 211. A contrary condition of facts, however, may exist, and may be shown by evidence, in which such presumption would be overcome: *Wolbert v. Lucas*, 10 Pa. St. 73; 49 Am. Dec. 578. It should be

carefully observed that the rights and liabilities of the grantee who takes “subject to” a mortgage, and the equities between himself and the mortgagor who conveys to him, may be modified, controlled, and completely determined by the covenants of title on the part of the grantor contained in the deed,—covenants by which the grantor may render himself primarily liable, and may exonerate the land, as between himself and the grantee. If this fact is borne in mind, it will reconcile any apparent discrepancy among the decisions. The effect upon the grantor's covenants of title of a clause stating that the conveyance is subject to a certain mortgage belongs to the law, and not to equity. Where a mortgagor conveys a portion of the premises and retains the residue, and where he conveys in parcels to different grantees, the equities between himself and his grantee in the one case, and among the various grantees in the other, involve questions of great importance, which will be more appropriately considered under subsequent heads.

tent on the part of the grantee to assume the liability of paying the mortgage debt, but this intent must clearly appear.¹ When the deed executed by the grantor contains a clause sufficiently showing such an intent, the acceptance thereof by the grantee consummates the assumption, and creates a personal liability on his part, which inures to the benefit of the mortgagee as though he had himself executed the deed.² When a grantee thus assumes payment of the mortgage debt as a part of the purchase price, the land in his hands is not only

¹ *Strong v. Converse*, 8 Allen, 557; 85 Am. Dec. 732; *Drury v. Tremont etc. Co.*, 13 Allen, 168, 171; *Weed Sewing Machine Co. v. Emerson*, 115 Mass. 554; *Trotter v. Hughes*, 12 N. Y. 74; 62 Am. Dec. 137; *Belmont v. Coman*, 22 N. Y. 438; 78 Am. Dec. 213; *Binsse v. Paige*, 1 Abb. App. 138; *Collins v. Rowe*, 1 Abb. N. C. 97; *Stebbins v. Hall*, 29 Barb. 524; *Miller v. Thompson*, 34 Mich. 10; *Fowler v. Fay*, 62 Ill. 375; *Dunn v. Rodgers*, 43 Ill. 260; *Comstock v. Hitt*, 37 Ill. 542, 546; *Hull v. Alexander*, 26 Iowa, 569; *Johnson v. Monell*, 13 Iowa, 300; *Bumgardner v. Allen*, 6 Munf. 439. A mere provision in the deed that the conveyance "is subject to" a certain mortgage, even though the mortgage is expressly excepted from the operation of the covenants of title, does not constitute an assumption; *Johnson v. Zink*, 51 N. Y. 333; *Strohauer v. Voltz*, 42 Mich. 444; *Slater v. Breese*, 36 Mich. 77. [See, however, *Canfield v. Shear*, 49 Mich. 313.] A provision in the deed that the amount of a certain mortgage shall be paid as a part of the purchase price has been held to be an assumption, and to create a personal liability of the grantee; *Thayer v. Torrey*, 37 N. J. L. 339; *Tichenor v. Dodd*, 4 N. J. Eq. 454; *Heid v. Vreeland*, 30 N. J. Eq. 591. But in *Fiske v. Tolman*, 124 Mass. 254, 26 Am. Rep. 659, the following clause, "subject, however, to a mortgage held by, etc., for seven thousand dollars, which is part of the above-named consideration," was decided not to be an assumption of the mortgage.

² *Converse v. Cook*, 8 Vt. 164; *Cur-*

tis v. Tyler, 9 Paige, 432, 435; *Halsey v. Reed*, 9 Paige, 446, 451; *King v. Whitely*, 10 Paige, 465; *Burr v. Beers*, 24 N. Y. 178; 80 Am. Dec. 327; *Atlantic Dock Co. v. Leavitt*, 54 N. Y. 35; 13 Am. Rep. 556; *Ricard v. Sanderson*, 41 N. Y. 179; *Spaulding v. Hallenbeck*, 35 N. Y. 204; 39 Barb. 79; *Trotter v. Hughes*, 12 N. Y. 74, 78; 62 Am. Dec. 137; *Huyler's Ex'r's v. Atwood*, 26 N. J. Eq. 504; *Lennig's Estate*, 52 Pa. St. 135, 138; *Hoff's Appeal*, 24 Pa. St. 200; *Miller v. Thompson*, 34 Mich. 10; *Crawford v. Edwards*, 33 Mich. 354; *Bishop v. Douglass*, 25 Wis. 696; *Thompson v. Bertram*, 14 Iowa, 476; *Corbett v. Waterman*, 11 Iowa, 86; [*Bowen v. Beck*, 94 N. Y. 86; 46 Am. Rep. 124; *Davis v. Hulett*, 58 Vt. 90; *O'Connor v. O'Conner*, 88 Tenn. 76.] It is even held that a verbal promise by the grantee to pay the mortgage creates such a personal liability, even though the conveyance appears on the face of the deed to be merely subject to the mortgage; *Strohauer v. Voltz*, 42 Mich. 444; *Drury v. Tremont etc. Co.*, 13 Allen, 168; *Bowen v. Kurtz*, 37 Iowa, 239; *Bolles v. Beach*, 22 N. J. L. 680; 53 Am. Dec. 263; [*Society of Friends v. Haines*, 47 Ohio St. 423. But this is denied in *Shepherd v. May*, 115 U. S. 505.]

The following is substantially the ordinary form of the clause inserted in the deed: "The said premises are conveyed subject to a certain mortgage [describing it], which mortgage the said party of the second part, his heirs and assigns, hereby assume and agree to pay as a part of the consideration of the said conveyance."

made the primary fund for payment of the debt, but he himself becomes personally liable therefor to the mortgagee or other holder of the mortgage. The assumption produces its most important effect, by the operation of equitable principles, upon the relations subsisting between the mortgagor, the grantee, and the mortgagee. As between the mortgagor and the grantee, the grantee becomes the principal debtor primarily liable for the debt, and the mortgagor becomes a surety, with all the consequences flowing from the relation of suretyship. As between these two and the mortgagee, although he may treat them both as debtors and may enforce the liability against either, still, after receiving notice of the assumption, he is bound to recognize the condition of suretyship, and to respect the rights of the surety in all of his subsequent dealings with them.¹ Payment, there-

¹ *Calvo v. Davies*, 73 N. Y. 211, 215; 29 Am. Rep. 130; 8 Hun, 222; *Marshall v. Davies*, 78 N. Y. 414, 420, 421; *Ayers v. Dixon*, 78 N. Y. 318, 323; *Russell v. Pistor*, 7 N. Y. 171; 57 Am. Dec. 509; *Atlantic Dock Co. v. Leavitt*, 54 N. Y. 35; 13 Am. Rep. 556; *Thorp v. Keokuk etc. Co.*, 48 N. Y. 253; *Burr v. Beers*, 24 N. Y. 178; 80 Am. Dec. 327; *Belmont v. Co-man*, 22 N. Y. 438; 78 Am. Dec. 213; *Trotter v. Hughes*, 12 N. Y. 74; 62 Am. Dec. 137; *Comstock v. Drohan*, 8 Hun, 373; *Mills v. Watson*, 1 Sweeny, 374; *Rubens v. Prindle*, 44 Barb. 336; *Gilbert v. Averill*, 15 Barb. 20; *Andrews v. Wolcott*, 16 Barb. 21; *Jumel v. Jumel*, 7 Paige, 591; *Blyer v. Monhol-land*, 2 Sand. Ch. 478; *Wales v. Sherwood*, 52 How. Pr. 413; *Townsend Sav. Bank v. Munson*, 47 Conn. 390; *Waters v. Hubbard*, 44 Conn. 340; *Huyler's Ex'rs v. Atwood*, 26 N. J. Eq. 504; *Risk v. Hoffman*, 69 Ind. 137; *Lilly v. Palmer*, 51 Ill. 331; *Thompson v. Bertrain*, 14 Iowa, 476; *Corbett v. Waterman*, 11 Iowa, 86; *[Schley v. Fryer]*, 100 N. Y. 71; *Thompson v. Dearborn*, 107 Ill. 87; *Dean v. Walker*, 107 Ill. 540; 47 Am. Rep. 467; *Pellier v. Gillespie*, 67 Cal. 582; *Wilcox v. Campbell*, 106 N. Y. 325.]

Since such grantee thus becomes

the principal debtor, primarily and absolutely liable for the debt, when he pays the mortgage it is completely extinguished, when he takes an assignment of it it is completely merged. He cannot by any form of assignment, legal or equitable, or by subrogation, keep the mortgage alive as against other liens on the land: *Winans v. Wilkie*, 41 Mich. 264; *Fowler v. Fay*, 62 Ill. 375; *McCabe v. Swap*, 14 Allen, 188; *Converse v. Cook*, 8 Vt. 164; and see *ante*, § 797, and cases in notes. [*Goodyear v. Goodyear*, 72 Iowa, 329; *Birke v. Abbott*, 103 Ind. 1; 53 Am. Rep. 474.] On the other hand, when the mortgagor, having become a surety, pays off the mortgage, he is entitled to hold it by equitable assignment or subrogation, for the purpose of reimbursement from the grantee: *Ayers v. Dixon*, 78 N. Y. 318, 323, per Danforth, J.; *Risk v. Hoffman*, 69 Ind. 137; *Lappen v. Gill*, 129 Mass. 349; and cases in note under § 797; [also *Orrick v. Durham*, 79 Mo. 174.] See, however, *Fairchild v. Lynch*, 14 Jones & S. 1.

The dealings of the mortgagee with these two parties are also governed by the doctrines of suretyship. He may release the mortgagor, and the grantee or the land will not be

fore, by a grantee who has assumed the entire mortgage debt completely extinguishes the mortgage; he cannot be subrogated to the rights of the mortgagee, and keep the mortgage alive for any purpose. While the mortgagee may release the mortgagor without discharging the

thereby discharged, since a release of a surety by the creditor in no way affects the liability of the principal debtor: *Tripp v. Vincent*, 3 Barb. Ch. 613. On the other hand, in his dealings with the grantee, at least after notice, the mortgagee must respect the rights of the mortgagor-surety. A valid extension of the time of payment, made by the mortgagee to the grantee, without the consent of the mortgagor, will therefore discharge the mortgagor from his liability: *Calvo v. Davies*, 73 N. Y. 211, 215; 29 Am. Rep. 130; 8 Hun, 222; [George v. Anderson, 60 Md. 26; 45 Am. Rep. 706; *Spencer v. Spencer*, 95 N. Y. 353; and when the land is conveyed merely subject to the mortgage, such extension of time will discharge the mortgagor to the extent of the value of the land: *Murray v. Marshall*, 94 N. Y. 611;] and a release by the mortgagee of a part of the premises in the hands of the grantee from the lien of the mortgage will also discharge the mortgagor's liability; *a fortiori* a release of the entire premises: *Townsend Sav. Bank v. Munson*, 47 Conn. 390; but see *Knowles v. Carpenter*, 8 R. I. 548.

After the grantee has thus assumed payment of a mortgage and incurred an absolute personal liability to the mortgagee, can his grantor, without the knowledge and consent of the mortgagee, release him from his assumption, and discharge him from the liability created thereby? It is strange, as it seems to me, that the decisions should be conflicting in their answer to this question. In the following cases it is either expressly held, or an unequivocal opinion is stated by way of *dictum*, that the grantor *cannot* thus release the grantee from his assumption and liability to the mortgagee: *Garnsey v. Rogers*, 47 N. Y. 233, 242; 7 Am. Rep. 440, per Rapallo, J.; *Hartley v. Harrison*, 24 N. Y. 170; *Simson v. Brown*, 6 Hun, 251; *Douglass v. Wells*, 18 Hun, 88; 57 How. Pr. 378

(overruling *Stephens v. Casbacker*, 8 Hun, 116, and disapproving *Crowell v. Hospital of St. Barnabas*, 27 N. J. Eq. 650); *Ranney v. McMullen*, 5 Abb. N. C. 246. [See also *Gifford v. Corrigan*, 117 N. Y. 257; 15 Am. St. Rep. 508; *N. Y. L. Ins. Co. v. Aitkin*, 125 N. Y. 660; *Willard v. Worsham*, 76 Va. 392; *Bay v. Williams*, 112 Ill. 91; 54 Am. Rep. 209.] On the other hand, a series of cases in New Jersey apparently give the mortgagor-grantor this power to release and discharge his grantee without consent of the mortgagee, *unless the grantor himself is insolvent*: *Crowell v. Hospital of St. Barnabas*, 27 N. J. Eq. 650; *O'Neill v. Clark*, 33 N. J. Eq. 444; *Youngs v. Public School Trustees*, 31 N. J. Eq. 290; *Public School Trustees v. Anderson*, 30 N. J. Eq. 366. [See also *Meech v. Ensign*, 49 Conn. 191; 44 Am. Rep. 225; and see *Gilbert v. Sanderson*, 56 Iowa, 349; 41 Am. Rep. 103 (a promise to a mortgagor to pay his mortgage may be released by the mortgagor before it is assented to by the mortgagee).] When an *absolute right* has vested in any manner in C against two parties, A and B, it is difficult to understand upon what principle either of the two can be relieved from his liability by an arrangement entered into between themselves alone. It is even more difficult to perceive how the insolvency of one of them should affect the liability of the other, by rendering it either more or less permanent. If A is bound as a principal debtor and B as a surety, it would be an extraordinary view of equity which should regard the creditor's right against either as depending upon the insolvency of the other. In my opinion, these New Jersey decisions are not sustained by the established doctrines of equity concerning the relation of suretyship. *Judson v. Dada*, 79 N. Y. 373, is expressly distinguished from the foregoing series of New York cases, and does not deal with the mortgagee's rights.

grantee, his release of the grantee, or his valid extension of the time of payment to the grantee, without the mortgagor's consent, would operate to discharge the mortgagor. In short, the doctrines concerning suretyship must control the dealings between these three parties. When land is thus conveyed, with an assumption of a mortgage by the grantee contained in the deed, subsequent grantees holding under the conveyance are charged with notice, and the land continues to be the primary fund for payment, as though the fact were recited in their own deeds.¹ In the foregoing statement of the general doctrine, it has been supposed that the grantee assumes payment of the whole mortgage. If a grantee, in purchasing a part of the mortgaged premises, assumes payment of a part of the mortgage, he becomes personally and primarily liable only for such part.² The general doctrine is well settled that a grantee who thus assumes payment, in whole or in part, of a mortgage as a portion of the purchase price of the land conveyed to him cannot contest the validity of the mortgage on any ground and thus evade the liability which he has assumed.³

¹ Weber v. Zeimet, 30 Wis. 283; Freeman v. Auld, 44 N. Y. 50; 37 Barb. 587. If the land is conveyed through successive grantees, each in turn assuming payment of the same mortgage, they all become and remain personally liable to the mortgagee, and he may obtain a decree for a deficiency against all. As to the rights of the mortgagee and the provisions of the decree in such cases, see Risk v. Hoffman, 69 Ind. 137; Youngs v. Public School Trustees, 31 N. J. Eq. 290.

² Snyder v. Robinson, 35 Ind. 311; 9 Am. Rep. 738; Torrey v. Bank of Orleans, 9 Paige, 649; 7 Hill, 260; Hilton v. Bissell, 1 Sand. Ch. 407. Although such grantee is only personally liable for a part, yet in order to protect his own land, under the settled doctrine concerning redemption he may be compelled to redeem the entire mortgage. If, therefore, he makes a general payment, it will be applied first on that portion of the

mortgage debt for which he is personally liable: Snyder v. Robinson, *supra*. And where he thus redeems the whole mortgage, he becomes subrogated to the rights of the mortgagee in that portion of it which he did not assume — or in other words, he becomes an equitable assignee of that portion — as security for his reimbursement from the rest of the mortgaged premises: Town of Salem v. Edgerly, 33 N. H. 46; Champlin v. Williams, 9 Pa. St. 341. When, however, the grantee of a part of the premises assumes payment of the whole mortgage upon the entire tract, no such right of subrogation exists; he has by his contract charged his own land with the entire mortgage debt, and by his payment the mortgage is completely extinguished: Welch v. Beers, 8 Allen, 151. [See also cases cited *post*, § 1225, 1.]

³ Ritter v. Phillips, 53 N. Y. 586; Freeman v. Auld, 44 N. Y. 50; 37 Barb. 587; Hardin v. Hyde, 40 Barb.

§ 1207. **Rationale of the Grantee's Liability.**—The ground of the grantee's liability adopted by the courts of a large majority of the states is that of contract. It is an application of the general doctrine, so widely prevailing in this country that it may properly be called an American doctrine,—where A makes a promise directly to B, for the benefit of C, upon a consideration moving alone from B, C, being the party beneficially interested, may treat the promise as though made to himself, and may maintain an action at law upon it in his own name against A, the promisor. According to this generally accepted view, the liability of the grantee who thus assumes the payment of an outstanding mortgage does not depend upon any extension of the equitable doctrine concerning subrogation; it is strictly legal, arising out of a contract binding at law; the mortgagee, instead of enforcing the liability by a suit in equity for a foreclosure, may maintain an action at law against the grantee upon his promise, and recover a personal judgment for the whole mortgage debt.¹ Another and entirely different *ration-*

435; *Cox v. Hoxie*, 115 Mass. 120; *Crawford v. Edwards*, 33 Mich. 354; *Pidgeon v. Trustees etc.*, 44 Ill. 501; and see *ante*, § 937, and cases cited in note; [*Conner v. Hurd*, 35 Minn. 518.]

¹ Mr. Jones represents the doctrine formulated in the text as exceptional, and as confined to the courts of New York: See 1 Jones on Mortgages, secs. 755, 758, 762. Mr. Jones has, I think, fallen into an error. In my work upon Remedies by the Civil Action, I have examined this question and collected many authorities, and have shown that the general doctrine of contracts as stated above in the text prevails throughout a majority of the states. In fact, the contrary rule, which forbids the party for whose benefit the promise is made to sue in his own name, is exceptional: See *Pomeroy on Remedies*, sec. 139, and cases cited.

That the grantee is liable *on his contract*, and may be sued by the mortgagee at law, or may be com-

pelled to pay the deficiency arising after a sale by a decree in an equity suit for a foreclosure, see *Booth v. Conn. Mut. L. Ins. Co.*, 43 Mich. 299; *Unger v. Smith*, 44 Mich. 22; *Strohauer v. Voltz*, 42 Mich. 444; *Carley v. Fox*, 38 Mich. 387; *Miller v. Thompson*, 34 Mich. 10; *Crawford v. Edwards*, 33 Mich. 354; *Lamb v. Tucker*, 42 Iowa, 118; *Schnucker v. Sibert*, 18 Kan. 104; 26 Am. Rep. 765. [See also *Ayres v. Randall*, 108 Ind. 595; *Follansbee v. Johnson*, 28 Minn. 311; *Dean v. Walker*, 107 Ill. 540; 47 Am. Rep. 467; and see *Gilbert v. Sander-son*, 56 Iowa, 349; 41 Am. Rep. 103; *Society of Friends v. Haines*, 47 Ohio St. 423.] It must be conceded, however, that in the recent cases of *Pardee v. Trent*, 82 N. Y. 385, 387, 388, and *Vrooman v. Turner*, 69 N. Y. 280, 283, 25 Am. Rep. 195, the New York court seems to favor the doctrine maintained by the courts of Massachusetts and of New Jersey, that the liability of the grantee depends upon the equitable relation of subrogation.

ale is adopted by the courts of certain states: that the liability of the grantee to the mortgagee does not arise from contract, and does not exist at law; but it results from an application, or more correctly an extension, of the equitable doctrine of subrogation. Since the mortgagor becomes a surety, the creditor is entitled by subrogation to all the securities which he holds from the principal debtor, and is thus entitled in equity to enforce the promise made to him by the grantee.¹ According to the general theory first above stated, the grantee's assumption and promise are so completely for the benefit of the mortgagee that the grantor can maintain no action thereon merely because the grantee has failed to perform his undertaking; it is only where the grantor has himself paid the mortgage that he becomes subrogated to the rights of the mortgagee, and is entitled to enforce it against the grantee.²

¹ This theory is adopted by the courts of Massachusetts and New Jersey: *Mellen v. Whipple*, 1 Gray, 317; *Pettee v. Peppard*, 120 Mass. 522; *Exchange Bank v. Rice*, 107 Mass. 37, 41; 9 Am. Rep. 1; *Crowell v. Currier*, 27 N. J. Eq. 152. The same view was taken by some of the earlier cases in New York, and perhaps in other states: *Halsey v. Reed*, 9 Paige, 446; *King v. Whitely*, 10 Paige, 465; *Russell v. Pistor*, 7 N. Y. 171; 57 Am. Dec. 509; *Trotter v. Hughes*, 12 N. Y. 74; 62 Am. Dec. 137. [See also *Davison v. Hulett*, 58 Vt. 90; *Willard v. Worsham*, 76 Va. 392; *Francisco v. Shelton*, 85 Va. 779; *Brown v. Stillman*, 43 Minn. 126; *Osborne v. Cabell*, 77 Va. 462.] According to this theory, the liability of the grantee to the mortgagee always depends upon the fact that his immediate grantor is also personally liable, since there would be no place for the operation of any subrogation, in the absence of such personal liability of the grantor: *Norwood v. De Hart*, 30 N. J. Eq. 412; *Arnaud v. Grigg*, 29 N. J. Eq. 482. The grantee's liability at law on his promise, however, does not depend upon any personal liability of his grantor: *Thorpe v. Keokuk* etc.

Co., 48 N. Y. 253; but see *Vrooman v. Turner*, 69 N. Y. 280; 25 Am. Rep. 195; [and *Meech v. Ensign*, 49 Conn. 191; 44 Am. Rep. 220.]

² *Ayers v. Dixon*, 78 N. Y. 318, 322, 323; but see *Furnas v. Durgin*, 119 Mass. 500; 20 Am. Rep. 341. The mortgagor-grantor's remedy is simply the right of exoneration by a surety against his principal debtor. It is difficult to perceive how the grantor can have any other right of action against his grantee consistently with the settled doctrines of equity concerning suretyship. That he is entitled to this remedy is clear: *Lappen v. Gill*, 129 Mass. 349; *Risk v. Hoffman*, 69 Ind. 137. When the agreement of assumption by the grantee is of such a special character that by its terms the grantor still remains the principal debtor, and not a surety, the grantee becomes liable to his grantor only, and not to the mortgagee: *Pardee v. Treat*, 82 N. Y. 385. As to the extent of the grantee's liability, see *Fenton v. Lord*, 128 Mass. 466; *Emley v. Mount*, 32 N. J. Eq. 470; *Strohauer v. Voltz*, 42 Mich. 444; *Waters v. Hubbard*, 44 Conn. 340; *Marshall v. Davies*, 78 N. Y. 414.

§ 1208. **Assumption by a Mortgagee.**—When a second mortgage contains a provision by which the mortgagee assumes the payment of a prior mortgage on the same land, such mortgagee thereby incurs no personal liability to the prior mortgagee. The whole foundation of the grantee's liability in such a case is wanting. Even if the second mortgage is in the *form* of an absolute deed, the result is the same. In either case there is no debt owing by the mortgagee to the mortgagor, which he can pay in whole or in part by assuming and paying a prior mortgage.¹

§ 1209. **II. Assignment of the Mortgage.**—In the few states which still retain, in the ordinary transactions of business and modes of administering justice, the strict legal theory according to which the mortgagee obtains and holds the legal estate in the land, an assignment of the mortgage fully efficient and operative must necessarily amount to a conveyance of the legal estate in the mortgaged premises. Such an assignment must, therefore, be an instrument under seal, or at least a written instrument sufficient to convey the legal title.² We are only concerned with that mode of assignment which is valid and efficient in equity, which operates to vest the assignee with all the mortgagee's interests, rights, remedies, and liabilities which are recognized and enforced in equity, and are capable of being transferred.³ A formal

¹ *Garnsey v. Rogers*, 47 N. Y. 233; 7 Am. Rep. 440. The opinion of Rappallo, J., contains a clear and convincing explanation of the necessary distinction between assumptions by a grantee and by a mortgagee.

² See 1 Jones on Mortgages, secs. 786-790, where the rules concerning this form of assignment are fully stated. It should be observed that in the cases involving these rules the question is, whether, in accordance with the strict legal theory, the assignment transferred the legal estate *in the land* to the assignee,—a question purely legal, and wholly foreign to the equitable system of mortgage which,

practically at least, prevails in the great majority of the states, even in many of those which also retain the legal view.

³ It would, however, be very misleading to call this an "equitable" assignment, as distinguished from that first above mentioned, as though its operation were confined to courts of equity, and it conferred rights recognized only in equity. In England and in Massachusetts, and a few other states, such an assignment is undoubtedly "equitable"; but in most of the states the rights which it confers are protected by all the courts.

written assignment by which the mortgagee in express terms transfers the mortgage and the debt secured thereby, and the bond, note, or other evidence of the debt, is always proper, and possesses many advantages, and should always be adopted, when possible, as a matter of expediency,¹ but it is not essential.

§ 1210. **Assignment of the Debt Carries with It the Mortgage — What Operates as an Assignment.** — The fundamental principle upon which this doctrine of assignment rests is, that the debt is the principal thing, and the mortgage is only an accessory or incident of the debt, and can have no separate independent existence.² The doctrine is therefore universal, that any valid operative assignment of the debt, whether evidenced by a bond, note, or otherwise, is also an efficient assignment of the mortgage, and vests the assignee with all the equitable rights, interests, and remedies of the mortgagee.³ In the absence

¹ Among these advantages is the power of having the assignment recorded, with the protection which the recording acts give to the assignee: See *ante*, §§ 733, 734.

² This principle, as the foundation of assignment, was forcibly stated by Swayne, J., in *Carpenter v. Longan*, 16 Wall. 271, 275, a case where the mortgage was given to secure a note. "The transfer of the note carries with it the security [the mortgage], without any formal assignment or delivery, or even mention of the latter. If not assignable at law, it is clearly so in equity. Whether the title of the assignee is legal or equitable is immaterial. The result follows irrespective of that question. All the authorities agree that the debt is the principal thing, and the mortgage an accessory. Equity puts the principal and accessory upon a footing of equality, and gives to the assignee of the evidence of the debt the same rights in regard to both. The mortgage can have no separate existence. When the note is paid, the mortgage expires; it cannot survive for a moment the debt which the note represents."

³ This proposition is *universal* in equity. In all the states adopting

the *second* system, as described in the previous section II., such assignment is complete and absolute. In some of the states adopting the *first* system, such assignment is regarded as simply equitable, since the assignee does not thereby acquire the legal estate in the mortgaged premises; but in several other states of the same class, I think this form of assignment is treated as practically complete and absolute: *Langdon v. Keith*, 9 Vt. 299; *Pratt v. Bank of Bennington*, 10 Vt. 293; 33 Am. Dec. 201; *Keyes v. Wood*, 21 Vt. 331; *Blake v. Williams*, 36 N. H. 39; *Page v. Pierce*, 26 N. H. 317; *Downer v. Button*, 26 N. H. 338; *Rigney v. Lovejoy*, 13 N. H. 247; *Smith v. Moore*, 11 N. H. 55; *South-erin v. Mendum*, 5 N. H. 420; *Whittemore v. Gibbs*, 24 N. H. 484; *Thorndike v. Norris*, 24 N. H. 451; *Wolcott v. Winchester*, 15 Gray, 461; *Green v. Hart*, 1 Johns. 580; *Runyan v. Mersereau*, 11 Johns. 534; 6 Am. Dec. 393; *Evertson v. Booth*, 19 Johns. 486, 491; *Jackson v. Blodget*, 5 Cow. 202; *Pattison v. Hull*, 9 Cow. 747; *Langdon v. Buel*, 9 Wend. 80; *Gillett v. Campbell*, 1 Denio, 520; *Parmelee v. Dann*, 23 Barb. 461; *Partridge v. Partridge*, 38 Pa. St. 78; *Hyman v.*

of a contrary statutory requirement, such assignment need not even be in writing; it may be merely verbal with delivery. It also follows, as a necessary consequence of the same principle, that an assignment of the mortgage alone, without the debt, is wholly nugatory in equity, and passes no equitable rights to the assignee. Even in the states where the legal estate in the premises may be conveyed by the mortgagee, such an assignment would only vest the assignee with the naked legal title held by him in trust for the one who owned the debt.¹ The rights

Devereux, 63 N. C. 624; Walker v. Kee, 14 S. C. 142; Cleveland v. Cohrs, 10 S. C. 224; Muller v. Wadlington, 5 S. C. 342; Prout v. Hoge, 57 Ala. 28; Center v. P. & M. Bank, 22 Ala. 743; Graham v. Newman, 21 Ala. 497; Cullum v. Erwin, 4 Ala. 452; Emanuel v. Hunt, 2 Ala. 190; Doe v. McLoskey, 1 Ala. 708; O'Hara v. Haas, 46 Miss. 374; Holmes v. McGinty, 44 Miss. 94; Henderson v. Herrod, 10 Smedes & M. 631; Lewis v. Starke, 10 Smedes & M. 120; Dick v. Mawry, 9 Smedes & M. 448; Perot v. Levasseur, 21 La. Ann. 529; Scott v. Turner, 15 La. Ann. 346; Perkins v. Sterne, 23 Tex. 561; 76 Am. Dec. 72; Paine v. French, 4 Ohio, 318; Burdett v. Clay, 8 B. Mon. 287; Miles v. Gray, 4 B. Mon. 417; French v. Turner, 15 Ind. 59; Burton v. Baxter, 7 Blackf. 297; Slaughter v. Foust, 4 Blackf. 379; Blair v. Bass, 4 Blackf. 539; Briggs v. Hannowald, 35 Mich. 474; Nelson v. Ferris, 30 Mich. 497; Martin v. McReynolds, 6 Mich. 70; Grassly v. Reinback, 4 Ill. App. 341; Mapps v. Sharpe, 32 Ill. 13; Pardee v. Lindley, 31 Ill. 174; 83 Am. Dec. 219; Vansant v. Allmon, 23 Ill. 30; Lucas v. Harris, 20 Ill. 165; Ryan v. Dunlap, 17 Ill. 40; 63 Am. Dec. 334; Andrews v. Hart, 17 Wis. 297; Rice v. Cribb, 12 Wis. 179; Blunt v. Walker, 11 Wis. 334; 78 Am. Dec. 709; Croft v. Bunster, 9 Wis. 503; Vandercook v. Baker, 48 Iowa, 199; Preston v. Morris, 42 Iowa, 549; Swan v. Yaple, 35 Iowa, 248; Bank of Indiana v. Anderson, 14 Iowa, 544; 83 Am. Dec. 390; Crow v. Vance, 4 Iowa, 434; Lindsey v. Bates, 42 Miss. 397; Potter v. Stevens, 40 Mo. 229; Chappell v. Allen, 38 Mo. 213; Ander-

son v. Baumgartner, 27 Mo. 80; Kurtz v. Sponable, 6 Kan. 395; Bennett v. Solomon, 6 Cal. 134; Ord v. McKee, 5 Cal. 515; [Converse v. Michigan Dairy Co., 45 Fed. Rep. 18. See also Connecticut Mut. L. Ins. Co. v. Talbot, 113 Ind. 373; 3 Am. St. Rep. 655; Johnson v. Johnson, 81 Mo. 331; Houston etc. R. R. Co. v. Bremond, 66 Tex. 159; Sedgwick v. Johnson, 107 Ill. 385.]

That an assignment of a part of the debt secured carries with it a proportionate part of the mortgage has already been shown: *Ante*, § 1202; and see Muller v. Wadlington, 5 S. C. 342. A verbal assignment with delivery is sufficient, in the absence of a statutory requirement of writing: *Kamena v. Huelbig*, 23 N. J. Eq. 78; *Pease v. Warren*, 29 Mich. 9; 18 Am. Rep. 58; but when it was intended to have a written assignment, a mere manual delivery will not pass the title: *Strause v. Josephthal*, 77 N. Y. 622. If the debt is evidenced by a note, a formal assignment of the mortgage, and delivery of the note *without indorsement*, constitutes a complete and absolute transfer: *Pease v. Warren*, 29 Mich. 9; 18 Am. Rep. 58; *Nelson v. Ferris*, 30 Mich. 497. [See *O'Connor v. McHugh*, 89 Ala. 531 (transfer by delivery of note and mortgage conveys the equitable, but not the legal, estate); *Bartlett v. Hinckley*, 124 Ill. 32; 7 Am. St. Rep. 331 (mortgagee can convey the legal title only by deed under seal); *Bailey v. Winn*, 101 Mo. 649.] A transfer of a negotiable note without indorsement passes a perfect equitable title.

¹ *Carpenter v. Longan*, 16 Wall. 271; *Hutchins v. Carleton*, 19 N. H. 487;

of priority acquired by the assignee, as governed by the original doctrines of equity, and as modified by the recording acts, and how far he takes subject to or freed from existing equities in favor of the mortgagor and others, have already been considered in a previous chapter.¹

Bell v. Morse, 6 N. H. 205; Bowers v. Johnson, 49 N. Y. 432; Merritt v. Bartholick, 36 N. Y. 44; 47 Barb. 253; Cooper v. Newland, 17 Abb. Pr. 342; Aymar v. Bill, 5 Johns. Ch. 570; Cleveland v. Cohrs, 10 S. C. 224; Carter v. Bennett, 4 Fla. 283; Doe v. McLoskey, 1 Ala. 708; Johnson v. Cornett, 29 Ind. 59; Bailey v. Gould, Walk. Ch. 478; Hitchcock v. Merrick, 18 Wis. 357; Swan v. Yaple, 35 Iowa, 248; Sangster v. Love, 11 Iowa, 580; Pope v. Jacobus, 10 Iowa, 262; Thayer v. Campbell, 9 Mo. 277, 280; Peters v. Jamestown B. Co., 5 Cal. 334; 63 Am. Dec. 134. [See also Williams v. Teachey, 85 N. C. 402; Dameron v. Eskridge, 104 N. C. 624.] In states adopting the *second* system, such an assignment would be wholly nugatory, conveying no interest to the assignee. In states of the *first* class, it would be possible at law, but the bare legal interest acquired by the assignee would be controlled by equity for the benefit of the party holding the debt, who would be the person *beneficially* interested, and the *equitable* owner of the mortgage. It should be observed, however, that when the mortgage itself, as is ordinarily the case, contains a covenant or promise on the mortgagor's part to pay the debt, or a provision from which such a promise will be implied, an assignment of the mortgage is necessarily, also, an assignment of the debt.

¹ See *ante*, vol. 2, §§ 703-715. That the assignee takes subject to existing equities (*ante*, § 704), see Vredenburg v. Burnet, 31 N. J. Eq. 229; Burbank v. Warwick, 52 Iowa, 493; Sims v. Hammond, 33 Iowa, 368; Mason v. Ainsworth, 58 Ill. 163. When a mortgage is given to secure a *negotiable* note, and the note and mortgage are assigned before maturity, the question whether the assignee takes the mortgage free from all equities, as in the case of a *bona fide* transferee of such a note alone, or whether he takes it subject to all equities, is ex-

amined *ante*, § 704, and cases are cited reaching exactly opposite conclusions. The following cases, also, maintain the rule that such assignee takes the mortgage free from all equities: Carpenter v. Longan, 16 Wall. 271; Kenicott v. Supervisors, 16 Wall. 452; Beals v. Neddo, 1 McCrary, 206; Gabbert v. Schwartz, 69 Ind. 450; Pierce v. Faunce, 47 Me. 507; Sprague v. Graham, 29 Me. 160; Taylor v. Page, 6 Allen, 86; Gould v. Marsh, 1 Hun, 566; and see Jones v. Smith, 22 Mich. 360. On the other hand, the following additional cases hold such assignment to be controlled by the general rule, and therefore subject to all existing equities: Grassly v. Reinback, 4 Ill. App. 341; Raily v. Smith, 14 Ohio St. 396; 84 Am. Dec. 385; Johnson v. Carpenter, 7 Minn. 176; Bouligny v. Fortier, 17 La. Ann. 121. The reasons for the ruling that such assignee takes free from all equities are stated with as much force as possible by Swayne, J., in Carpenter v. Longan, *supra*. Reduced to their lowest terms, they amount to this: that the debt is the principal thing, and the mortgage is a mere adjunct of the debt, and has no existence separate from the debt. Admitting the full force of this reasoning, the conclusion is, in my opinion, the result of a false analogy. The answer to it is very short, but, as it seems to me, very complete. The note and the mortgage do not together constitute a promissory note. The conclusion reached by this line of cases not only destroys the uniformity and consistency of the doctrines concerning mortgages, but misapprehends and misapplies the peculiar doctrines concerning negotiable instruments. The most distinctive feature of negotiability—the rule that the *bona fide* transferee takes a bill or note free from defenses—had its origin in the customs of merchants. It was first adopted by the courts, and has ever since been maintained, solely with a view to promote the interests of mer-

§ 1211. **Equitable Assignment by Subrogation.** — Under some circumstances, the payment of the amount due on a mortgage, when made by certain classes of persons, is held in equity to operate as an assignment of the mortgage. By means of the payment, the mortgage is not satisfied and the lien of it destroyed, but equity regards the person making the payment as thereby becoming the owner of the mortgage, at least for some definite purposes, and the mortgage as being kept alive, and the lien thereof as preserved, for his benefit and security. This equitable result follows, although no actual assignment, written or verbal, accompanied the payment, and the securities themselves were not delivered over to the person making payment, and even though a receipt was given speaking of the mortgage debt as being fully paid, and sometimes even though the mortgage itself was actually discharged and satisfied of record. This equitable doctrine, which is a particular application of the broad principle of subrogation, is enforced whenever the person making the payment stands in such relations to the premises or to the other parties that his interests, recognized either by law or by equity, can only be fully protected and maintained by regarding the transaction as an assignment to

chants, and to secure the success and freedom of mercantile and commercial dealings. A promissory note accompanied by a mortgage is not in any sense a *mercantile or commercial security*; all the reasons of the peculiar rule of the law merchant fail in their application to it. The courts which extend this rule to a note and mortgage are misled by a false analogy; in order to reach their conclusion, they are obliged to treat the mortgage as a nullity, — not merely as an *incident* of the note, but as having actually no existence. I am strongly of the opinion that the cases of which the Illinois decisions are an example rest upon a true foundation of principle. It is held in the very recent case of *Burhans v. Hutcheson*, 25 Kan. 625, 37 Am. Rep. 274, that where a note and mortgage are assigned for value

before maturity, and the assignment was not recorded, and no notice of it was given to the mortgagor, payment by the mortgagor to the original mortgagee does not in any way affect the rights of the assignee to enforce the security, — the absence of notice being wholly immaterial. This decision is certainly inconsistent with a doctrine supposed to be settled and familiar: See *ante*, vol. 2, § 702. The only possible ground upon which it can be sustained is the rule stated above, which imparts to such mortgages the distinctive characteristics of negotiable paper. This case, I think, well illustrates the correctness of my criticisms; it shows to what extent that rule destroys the consistency and uniformity of the settled doctrines concerning mortgages. See also *Jones v. Smith*, 22 Mich. 360; *Van Keuren v. Corkins*, 4 Hun, 129.

him, and the lien of the mortgage as being kept alive, either wholly or in part, for his security and benefit.¹

§ 1212. **In whose Favor Such Equitable Assignment Exists.** — Equity does not admit the doctrine of equitable assignment in favor of every person who pays off a mortgage. Such relations must exist towards the mortgaged premises or with the other parties, that the payment is not a purely voluntary act, but is an equitably necessary or proper means of securing the interests of the one making it from possible loss or injury. The payment must be made by or on behalf of a person who had some interest in the premises, or some claim against other parties, which he is entitled, in equity, to have protected and secured. A mere stranger, therefore, who pays off a mortgage as a purely voluntary act can never be an equitable assignee.² In general, when any person having a subse-

¹ It should be carefully observed that this peculiarly equitable doctrine can have application only to persons who, properly speaking, make payment of the mortgage. If a stranger, having no interest whatever in the premises, purchases the mortgage from the holder thereof, and takes an assignment to himself, the doctrine clearly has no application. If, however, persons acquiring subsequent interests in the premises, as purchasers, incumbrancers, and the like, but not being the debtors, pay off the mortgage for the purpose of securing their own interest, their act is properly called a "payment," and they are plainly in a very different position from that of the stranger who purchases the mortgage. The doctrine formulated in the text is an instance of *subrogation*, and depends upon the same general grounds and considerations. By many writers and judges it is discussed under the name of "subrogation" alone; the person paying is described as being subrogated to the rights of the mortgagee in the mortgage security. I prefer to use the name of "equitable assignment," — a designation which accurately describes the nature of the transaction and its effects upon the rights of the parties. The classes of persons whose

rights are to be considered in connection with this doctrine are the stranger who voluntarily pays the mortgage, the stranger who advances money for its payment at the request of the mortgagor or other person upon whom the liability to pay rests, the mortgagor, his heirs, devisees, and administrators or executors, his grantee who assumes payment of the mortgage, his grantee merely subject to the mortgage, the widow of the mortgagor or of any subsequent owner of the premises, subsequent incumbrancers, subsequent lessees, — in short, all persons who acquire subsequent interests in the mortgaged premises or in any part thereof. This doctrine in connection with the general principle of subrogation is elaborately discussed in the American editor's notes to *Aldrich v. Cooper*, 2 Lead. Cas. Eq., 228, 255, et seq., and to *Dering v. Earl of Winchelsea*, 1 Lead. Cas. Eq., 4th Am. ed., 120, 134-187; and see section concerning merger, *ante*, §§ 789-800, vol. 2.

² Such a stranger, having no interest in the premises and no relations with the parties, cannot even compel the mortgagee to accept payment of the amount due on the mortgage. If the mortgagee voluntarily accepts the money, he cannot be compelled to

quent interest in the premises, and who is therefore entitled to redeem for the purpose of protecting such interest, and who is not the principal debtor primarily and absolutely liable for the mortgage debt, pays off the mortgage, he thereby becomes an equitable assignee thereof, and may keep alive and enforce the lien so far as may be necessary in equity for his own benefit; he is subrogated to the rights of the mortgagee to the extent necessary for his own equitable protection.¹ The doctrine is also justly

assign the mortgage to the stranger. If the mortgagee *consents* both to accept the money and to give an assignment, then the transaction becomes an ordinary purchase of the mortgage by the stranger, which can always be effected with the mortgagee's *consent*, but never without. In no case, therefore, can the stranger voluntarily paying occupy the position of an *equitable* assignee, — he can never claim to be *subrogated* to the rights of the mortgagee.

¹ In *Muir v. Berkshire*, 52 Ind. 149, 151, Biddle, C. J., said: "Subrogation generally takes place between co-creditors, where the junior pays the debt due to the senior, to secure his own claim, or it arises from transactions of principals and sureties, and sometimes between co-sureties or co-guarantors. It is not allowed to voluntary purchasers or strangers, unless there is some peculiar equitable relation in the transaction, and never to mere meddlers. But while this is the rule generally, we think that a person who has paid a debt under a colorable obligation to do so, that he may protect his own claim, should be subrogated to the rights of the creditor." In *Ellsworth v. Lockwood*, 42 N. Y. 89, 97, Sutherland, J., said: "The subrogation or substitution by operation of law to the rights and interests of the mortgagee in the land is on and by redemption; and redemption is *payment* of the mortgage debt, after forfeiture by the terms of the mortgage contract; so that really the subrogation or substitution by operation of law arises or proceeds on the theory that the mortgage debt is paid. If the holder of a bond and mortgage *assigns* them to a party claiming a

right to redeem, the latter is subrogated, by the assignment, to the mortgage debt and mortgage security, and to the instruments evidencing such debt and security, and there is no room or occasion for subrogation by operation of law." The class of persons coming within the description of the text who are equitable assignees, and thus subrogated to the mortgagee by the act of payment, include the grantee from the mortgagor or any subsequent grantee who has taken the land simply subject to the mortgage; the heir or devisee of the mortgagor; the widow of the mortgagor or of any subsequent owner; a subsequent encumbrancer by mortgage, judgment, or otherwise; a subsequent lessee, and the like. The mortgagor himself who has conveyed the premises to a grantee in such manner that the latter has assumed payment of the mortgage debt becomes an equitable assignee on payment, and is subrogated to the mortgagee, *so far as is necessary to enforce his equity of reimbursement or exoneration from such grantee*; but *quære*, is he an equitable assignee to any greater extent or against any other parties? See *ante*, § 1206, and notes; also vol. 2, § 797. The doctrine is also extended to a person who had no subsequent interest in the premises, and was therefore under no obligation or personal necessity of paying the debt, but who at the instance of the debtor pays off the mortgage for his benefit, or advances the money for its payment, under an agreement that he shall have security for his payment or advances. Such a person is not a mere stranger and volunteer. The following cases furnish illustrations of the doctrine as applied to various persons belonging to the

extended, by analogy, to one who, having no previous interest, and being under no obligation, pays off the mortgage, or advances money for its payment, at the instance of a debtor party and for his benefit; such a person is in no true sense a mere stranger and volunteer.

§ 1213. **In whose Favor Such Equitable Assignment does not Exist.** — On the other hand, if payment of the mortgage debt is made to the mortgagee or other holder of the mortgage, by a party who is himself personally and primarily liable for the debt, who is in any manner and by any means the actual primary debtor, whose duty it is to pay the debt absolutely, and before all others, such payment operates *ipso facto* as an end of the mortgage, and the lien is completely destroyed. The party so paying is not subrogated to the rights of the mortgagee; there is no equitable assignment to him of the mortgage security; even if he should receive a formal assignment, the mortgage could not be thus kept alive, but would be wholly merged and ended.¹

class as above enumerated: Cobb v. Dyer, 69 Me. 494 (where the mortgage had been actually satisfied and discharged of record on payment by a junior mortgagee); Walker v. King, 45 Vt. 525; 44 Vt. 601; Wheeler v. Willard, 44 Vt. 640; Twombly v. Cassidy, 82 N. Y. 155; Barnes v. Mott, 64 N. Y. 397; 21 Am. Rep. 625 (the mortgage discharged of record); Brainard v. Cooper, 10 N. Y. 356; Russell v. Pistor, 7 N. Y. 171; 57 Am. Dec. 509; Snelling v. McIntyre, 6 Abb. N. C. 469; Dings v. Parshall, 7 Hun, 522; McGiven v. Wheelock, 7 Barb. 22; Rogers v. Traders' Ins. Co., 6 Paige, 583; Klock v. Cronkhite, 1 Hill, 107; Tice v. Annin, 2 Johns. Ch. 125; Mosier's Appeal, 56 Pa. St. 76; 93 Am. Dec. 783; Roddy's Appeal, 72 Pa. St. 98; Fiacre v. Chapman, 32 N. J. Eq. 463; Robinson v. Urquhart, 12 N. J. Eq. 515; Carter v. Taylor, 3 Head, 30; Simpson v. Gardiner, 97 Ill. 237 (by one of two owners in common); Young v. Morgan, 89 Ill. 199; Matteson v. Thomas, 41 Ill. 110; Wood v. Smith, 51 Iowa, 156; White v. Hampton, 13 Iowa, 259; Levy v. Mar-

tin, 48 Wis. 198; Greenwell v. Heritage, 71 Mo. 459; Lockwood v. Marsh, 3 Nev. 138; Carpentier v. Brenham, 40 Cal. 221; and see 1 Jones on Mortgages, secs. 874-885; and *ante*, vol. 2, §§ 797, 798. [See also McCormick v. Knox, 105 U. S. 126; Arnold v. Green, 116 N. Y. 566; Kelly v. Duff, 61 N. H. 435; Duffy v. McGuinness, 13 R. I. 595; Sutton v. Sutton, 26 S. C. 33; Ohmer v. Boyer, 89 Ala. 273; First Nat. Bank v. Ackerman, 70 Tex. 315; Johuson v. Barrett, 117 Ind. 551; 10 Am. St. Rep. 83; Ebert v. Gerding, 116 Ill. 216; Wilson v. Mayberry, 75 Wis. 191; 17 Am. St. Rep. 193; Gerdine v. Menage, 41 Minn. 417; Bryson v. Close, 60 Iowa, 357; Allen v. Dermott, 80 Mo. 56; Crippen v. Chappel, 35 Kan. 495; 57 Am. Rep. 187; Swain v. Stockton S. & L. Soc., 78 Cal. 600; 12 Am. St. Rep. 118.]

¹ In this description are included the mortgagor himself, so long as he remains the principal debtor, and has not changed his relations by a conveyance, and also the grantee from the mortgagor who has assumed payment of the mortgage debt, and thus ren-

§ 1214. The Right to Compel an Actual Assignment.

— Whether the equitable assignee may compel an actual assignment is a question which has received conflicting answers from different courts. Some cases hold that every person who, on payment, becomes an equitable assignee is entitled to compel the execution of a formal assignment of the mortgage by the mortgagee or other holder, for the purpose of perfecting his own equitable right of subrogation.¹ By other cases the position is maintained that such person must, in general, rely upon his equitable assignment and right of subrogation, and cannot compel the execution of a formal assignment; that only a technical surety is entitled to perfect his right of subrogation by calling for an assignment in writing.²

§ 1215. III. Rights and Liabilities of the Mortgagee in Possession. — In has been shown in the preceding section II. that in a portion of the states adopting the first or legal system the mortgagee is entitled to possession at once upon the execution of the mortgage; that in the remaining states of the same class he is entitled to posses-

dered himself the principal and primary debtor therefor. When a grantee has thus become the principal debtor, the mortgagor, as *his* surety, upon payment, is an equitable assignee of the mortgage, and is subrogated to the mortgagee, so far as is necessary to enforce his right of exoneration by the grantee; but it by no means follows that he is an equitable assignee of the mortgage, and entitled to enforce its lien *against all subsequent encumbrancers and other parties* interested. In like manner, if A and B are co-owners of land, and jointly give a mortgage thereon, and A pays off the entire debt, he is an equitable assignee of the mortgage to the extent of compelling a contribution from B; but this may not entitle him to keep the mortgage alive as against all other parties subsequently and independently interested in the premises. As illustrations of the text, see *Moody v. Moody*, 68 Me. 155 (mortgage paid by the mortgagor-debtor, and although procured by him to be assigned to a third person,

it was held to be extinguished); *Willson v. Burton*, 52 Vt. 394 (payment by a grantee who had assumed the mortgage); *Dickason v. Williams*, 129 Mass. 182; 37 Am. Rep. 316 (ditto); and see 1 Jones on Mortgages, secs. 864, 865; also *ante*, vol. 2, section on merger, §§ 793, 796-798. [See further, *Birke v. Abbott*, 103 Ind. 1; 53 Am. Rep. 474.]

¹ *Twombly v. Cassidy*, 82 N. Y. 155; *Ellsworth v. Lockwood*, 42 N. Y. 89; *Johnson v. Zink*, 52 Barb. 396; *Tompkins v. Seely*, 29 Barb. 212; *Pardee v. Van Anken*, 3 Barb. 534; *McLean v. Tompkins*, 18 Abb. Pr. 24; *Mount v. Suydam*, 4 Sand. Ch. 399; *Baker v. Terrell*, 8 Minn. 195; and see *Lyon's Appeal*, 61 Pa. St. 15; *Bishop v. Ogden*, 9 Phila. 524.

² *Lamb v. Montague*, 112 Mass. 352; *Lamson v. Drake*, 105 Mass. 564; *Butler v. Taylor*, 5 Gray, 455. It seems, however, that he is entitled to have the mortgage delivered up to himself uncancelled; *Hamilton v. Dobbs*, 19 N. J. Eq. 227.

sion only upon the mortgagor's default; and that in either case, upon thus acquiring the possession, he can retain it until the mortgage is redeemed. In all the states adopting the second system, the mortgagee is not entitled to possession, either before or after a breach of the condition. If, however, he actually acquires possession, with the consent of the mortgagor, or in any other lawful manner, although the nature of his interest is not thereby altered, he is entitled to retain such possession until the mortgage is redeemed or paid.¹ The rights and consequent liabilities of the mortgagee who is actually and lawfully in possession, as against the mortgagor and those claiming under or through him, are thus virtually the same in all the states, as well in those adopting the second as in those adopting the first system, as heretofore described. In order, however, that these special rights and liabilities may arise from his possession, it must be a possession taken and held by him as mortgagee.²

§ 1216. **With What He is Chargeable—Rents.**—The general duty of the mortgagee in possession towards the premises is that of the ordinary prudent owner. He must account, in general, for their rents and profits, or for their occupation value. When the land is in the occupation of tenants, he is chargeable with the gross actual rents and profits received, and with no more, unless he has been guilty of a willful default.³ When the land is occu-

¹ See *ante*, § 1189.

² *Parkinson v. Hanbury*, L. R. 2 H. L. 1; 2 De Gex, J. & S. 450; *Sanford v. Pierce*, 126 Mass. 146; *Lamson v. Drake*, 105 Mass. 564; *Davenport v. Turpin*, 41 Cal. 100. [See also *Daniel v. Coker*, 70 Ala. 260; *Rogers v. Benton*, 39 Minn. 39; 12 Am. St. Rep. 613; *Banning v. Sabin*, 45 Minn. 431.]

³ Some of the American cases make him chargeable, under these circumstances, with the amount of rent which he might with reasonable diligence have received; but this extensive liability, which is that of fiduciary persons, is not sustained by the weight of authority: *Parkinson v. Hanbury*,

L. R. 2 H. L. 1; *Hughes v. Williams*, 12 Ves. 493; *Chaplin v. Young*, 33 Beav. 330; *Blum v. Mitchell*, 59 Ala. 535; *Barron v. Paulling*, 38 Ala. 292; *Adkins v. Lewis*, 5 Or. 292; *Cook v. Ottawa University*, 14 Kan. 548; *Freytag v. Hoeland*, 23 N. J. Eq. 36, 41; *Shaeffer v. Chambers*, 6 N. J. Eq. 548; 47 Am. Dec. 211; *Van Buren v. Olmstead*, 5 Paige, 9; *Quin v. Brittain*, 3 Edw. Ch. 314; *Milliken v. Bailey*, 61 Me. 316; *Harper v. Ely*, 70 Ill. 581; *Moore v. Titman*, 44 Ill. 367; *Strang v. Allen*, 44 Ill. 428; *Pierce v. Robinson*, 13 Cal. 116; *Hidden v. Jordan*, 28 Cal. 301; 32 Cal. 397. [See also *Merriam v. Goss*, 139 Mass. 83; *Brown*

pied by the mortgagee himself, he is chargeable with the fair annual value as an occupation rent.¹ *Willful default:* He is also chargeable with losses occasioned by his willful default.²

§ 1217. **Allowances and Credits, Repairs, Disbursements.**—The mortgagee is allowed, and credited in his account, with the cost of all ordinary, reasonably necessary repairs made to the premises, and with all reasonable disbursements and expenses necessary for their proper management and protection.³ *Improvements:* The mortgagee will be allowed for permanent improvements, increasing the value of the estate, if made *with the consent* or acquiescence of the mortgagor; but he cannot be al-

v. South Boston Sav. Bank, 148 Mass. 300; Young v. Omohundro, 69 Md. 424; Steen v. Marx, 32 S. C. 286; Pinneo v. Goodspeed, 120 Ill. 524, 533; Murdock v. Clarke, 90 Cal. 427; Gresham v. Ware, 79 Ala. 192. For the more extensive liability, see Still v. Buzzell, 60 Vt. 478.]

¹ Smart v. Hunt, 1 Vern. 418, note; Trulock v. Robey, 15 Sim. 265; 2 Phill. Ch. 395; Wilson v. Metcalfe, 1 Russ. 530; Dawson v. Drake, 30 N. J. Eq. 601; Moore v. Degraw, 5 N. J. Eq. 346; Barnett v. Nelson, 54 Iowa, 41; 37 Am. Rep. 183; Montgomery v. Chadwick, 7 Iowa, 114; Van Buren v. Olmstead, 5 Paige, 9; Sanders v. Wilson, 34 Vt. 318.

² This includes losses by his willful or negligent failure to collect rent, or to obtain a better rent, or suffering the premises to remain in the possession of an insolvent tenant, and the like: Parkinson v. Hanbury; Hughes v. Williams, and other cases cited in the last note but one; Montague v. Boston etc. R. R., 124 Mass. 242; Miller v. Lincoln, 6 Gray, 556. Also committing or suffering acts of waste or spoliation: Sandon v. Hooper, 6 Beav. 246; Hood v. Easton, 2 Giff. 692; Hornby v. Matcham, 16 Sim. 325; Lord Middleton v. Elliot, 15 Sim. 531, 536; Woodman v. Higgins, 14 Jur. 846; Barnett v. Nelson, 54 Iowa, 41; 37 Am. Rep. 183; Scott v. Webster, 50 Wis. 53; Onderdonk v. Gray, 19 N. J. Eq. 65. He is also charged with the loss resulting from unsuccessful

speculation with the property: Hughes v. Williams, 12 Ves. 493; Marriott v. Anchor etc. Co., 3 De Gex, F. & J. 177; Palmer v. Hendrie, 27 Beav. 349. As to the opening or working mines by the mortgagee, see Millett v. Davey, 31 Beav. 470; Rowe v. Wood, 2 Jacob & W. 553; Norton v. Cooper, 25 L. J. Ch. 121; Irwin v. Davidson, 3 Ired. Eq. 311.

³ What repairs and expenses are reasonable must depend largely upon the circumstances of each case. The payment of taxes is a proper disbursement: Sandon v. Hooper, 6 Beav. 246; Neesom v. Clarkson, 4 Hare, 97; Hardy v. Reeves, 4 Ves. 466, 480; Blum v. Mitchell, 59 Ala. 535 (taxes); Adkins v. Lewis, 5 Or. 292; Cook v. Ottawa Univ., 14 Kan. 548; Hidden v. Jordan, 28 Cal. 301; 32 Cal. 397; Quin v. Brittain, Hoff. Ch. 353; Moore v. Cable, 1 Johns. Ch. 385, 387; Clark v. Smith, 1 N. J. Eq. 121, 139; [Raynor v. Drew, 72 Cal. 307; Sidenberg v. Ely, 90 N. Y. 263 (taxes).] The mortgagee in possession is only bound to make *necessary* repairs: Godfrey v. Watson, 3 Atk. 517; Russel v. Smithies, 1 Anstr. 96. He must not commit waste, but is not in a fiduciary position: See Beuhm v. Rowe, 2 Cal. 387; 56 Am. Dec. 342; Shaeffer v. Chambers, 6 N. J. Eq. 548; 47 Am. Dec. 211. [If he claim adversely to the mortgagor, as absolute owner, he is entitled to no allowances: Booth v. Steam Packet Co., 63 Md. 39; and see Gresham v. Ware, 79 Ala. 192.]

lowed for such expenditures when made *without* the mortgagor's consent. He is bound to keep the property without unreasonable deterioration, and is therefore credited with necessary repairs; but he has no right to enhance the value of the estate, and thus render it more difficult for the mortgagor to redeem.¹ *Compensation*: The mortgagee cannot charge any commissions or other compensation for his services, since they are rendered primarily for his own benefit.²

§ 1218. **Liability to Account.**—The mortgagee in possession is bound to account, upon the basis of charges and allowances above described, not only to the mort-

¹ Lord Trimleston v. Hamill, 1 Ball & B. 377, 385; Powell v. Trotter, 1 Drew. & S. 388; Sandon v. Hooper, 6 Beav. 246, 248; Adkins v. Lewis, 5 Or. 292; Cook v. Ottawa Univ., 14 Kan. 548; Hidden v. Jordan, 28 Cal. 301; 32 Cal. 397; Ruby v. Portland, 15 Me. 306; Russell v. Blake, 2 Pick. 505; Quin v. Brittain, Hoff. Ch. 353; Moore v. Cable, 1 Johns. Ch. 385; Bell v. The Mayor, 10 Paige, 49; Benedict v. Gilman, 4 Paige, 58; Mickles v. Dillaye, 17 N. Y. 80; Clark v. Smith, 1 N. J. Eq. 121, 138; Harper's Appeal, 64 Pa. St. 315; Givens v. McCalmont, 4 Watts, 460; Dougherty v. McColgan, 6 Gill & J. 275; Neale v. Hagthorp, 3 Bland, 551, 590; Lowndes v. Chisholm, 2 McCord Eq. 455; 16 Am. Dec. 667; McCarron v. Cassidy, 18 Ark. 34. [See also Beckman v. Wilson, 61 Cal. 335; Raynor v. Drew, 72 Cal. 307. In Shepard v. Jones, 21 Ch. Div. 469, it was held that the mortgagee may be allowed for reasonable improvements, although the mortgagor had no notice of the expenditure.] But when the mortgagee is not credited with the cost of improvements, he is not charged with the increase of rent or occupation value resulting from such improvements: Moore v. Cable; Bell v. The Mayor; Clark v. Smith; and Hidden v. Jordan, *supra*.

The general rule of the text has been relaxed, in its application to certain special conditions of fact, by many American cases, which hold that the mortgagee is allowed for such improvements when made by him under

a *bona fide* but mistaken supposition that he was the absolute owner, and that the equity of redemption had been barred: Miner v. Beekman, 50 N. Y. 337; Mickles v. Dillaye, 17 N. Y. 80; Benedict v. Gilman, 4 Paige, 58; Putnam v. Ritchie, 6 Paige, 390; Fogal v. Pirro, 10 Bosw. 100; Troost v. Davis, 31 Ind. 34; Roberts v. Fleming, 53 Ill. 196, 198; Montgomery v. Chadwick, 7 Iowa, 114; and also when made by a person who, although in reality a mortgagee, has reason to believe from the form of his conveyance or other circumstances of his purchase that he is the absolute owner: McSorley v. Larissa, 100 Mass. 270; Bright v. Boyd, 1 Story, 478; Vanderhaise v. Hugues, 13 N. J. Eq. 410; Harper's Appeal, 64 Pa. St. 315; Barnard v. Jennison, 27 Mich. 230; Green v. Westcott, 13 Wis. 606; Green v. Dixon, 9 Wis. 532; Bacon v. Cottrell, 13 Minn. 194.

² Chambers v. Goldwin, 9 Ves. 254, 271; Langstaffe v. Fenwick, 10 Ves. 405; Nicholson v. Tutin, 3 Kay & J. 159; French v. Baron, 2 Atk. 120; Godfrey v. Watson, 3 Atk. 517; Bonithon v. Hockmore, 1 Vern. 316; Elmer v. Loper, 25 N. J. Eq. 475; Clark v. Smith, 1 N. J. Eq. 121, 137; Moore v. Cable, 1 Johns. Ch. 385, 388; Benham v. Rowe, 2 Cal. 387; 56 Am. Dec. 342. In Massachusetts he is allowed a commission on the rents, as a compensation: Gerrish v. Black, 104 Mass. 400; Adams v. Brown, 7 Cush. 220; Tucker v. Buffum, 16 Pick. 46; and see Waterman v. Curtis, 26 Conn. 241.

gagor, but to subsequent mortgagees, if he has notice of their encumbrances.¹ This accounting belongs exclusively to the equitable jurisdiction, and can be enforced only in a suit to redeem, brought by the mortgagor or subsequent encumbrancer.² Whenever the net amount of annual rents or occupation value received by the mortgagee exceeds the interest then due, the accounting is taken with annual rests.³ If the mortgagee remains in possession after the mortgage debt has been fully paid, he becomes a trustee for the mortgagor, and is chargeable with interest on the net excess of rents received by him; but the mortgagor can only enforce his rights to the land by an equitable action for an account and to redeem.⁴

§ 1219. IV. Redemption — By the Mortgagor. — As has already been shown, the right of redemption is the

¹ *Berney v. Sewell*, 1 Jacob & W. 647, 650; *Archdeacon v. Bowes*, 13 Price, 353; *Harrison v. Wyse*, 24 Conn. 1; 63 Am. Dec. 151; *Shields v. Kimbrough*, 64 Ala. 504.

² *Farrant v. Lovel*, 3 Atk. 723; *Chapman v. Smith*, 9 Vt. 153; *Seaver v. Durrant*, 39 Vt. 103; *Bell v. The Mayor*, 10 Paige, 49; *Givens v. McCalmont*, 4 Watts, 460, 464; *Gordon v. Hobart*, 2 Story, 243; *Dexter v. Arnold*, 2 Sum. 108; *Watford v. Oates*, 57 Ala. 290. [See also *Farris v. McCurdy*, 78 Ala. 250; *Dailey v. Abbott*, 40 Ark. 275.] Even in the states adopting the second or equitable system, the mortgagor cannot recover the land by an action of ejectment, but must sue in equity for a redemption, in which an accounting can be had; *Hubbell v. Moulson*, 53 N. Y. 225; 13 Am. Rep. 519; and see *ante*, § 1189; [also *Posten v. Miller*, 60 Wis. 494.]

³ This rule applies both to a mortgagee who receives rents from tenants, and to one who actually occupies the land; *Gould v. Tancred*, 2 Atk. 533; *Shephard v. Elliot*, 4 Madd. 254; *Morris v. Islip*, 20 Beav. 654; *Wilson v. Metcalfe*, 1 Russ. 530; *Blum v. Mitchell*, 59 Ala. 535; *Watford v. Oates*, 57 Ala. 290; *Elmer v. Loper*, 25 N. J. Eq. 475; *Gladding v. Warner*, 36 Vt. 54; *Reed v. Reed*, 10 Pick. 398;

Gordon v. Lewis, 2 Sum. 143, 147; *Shaeffer v. Chambers*, 6 N. J. Eq. 548; 47 Am. Dec. 211; *Green v. Wescott*, 13 Wis. 606. The fundamental object of the rule governing the mode of accounting is to prevent the compounding of interest, to prevent the adding of interest to principal, and the computing interest on this sum: See cases last cited, and also *Connecticut v. Jackson*, 1 Johns. Ch. 13, 17; 7 Am. Dec. 471; *Stone v. Seymour*, 15 Wend. 19, 24; *Jencks v. Alexander*, 11 Paige, 619, 625; *Bennett v. Cook*, 2 Hun, 526; *Van Vronker v. Eastman*, 7 Met. 157; for illustrations of English mode of accounting, see *Thorneycroft v. Crockett*, 2 H. L. Cas. 239, 256; *Binnington v. Harwood*, Turn. & R. 477; *Heighington v. Grant*, 5 Mylne & C. 258; *Thompson v. Hudson*, L. R. 10 Eq. 497. By the English rule, annual rests are not directed when the interest was in arrear at the time the mortgagee took possession: *Finch v. Brown*, 3 Beav. 70; *Wilson v. Cluer*, 3 Beav. 136; *Nelson v. Booth*, 3 De Gex & J. 119.

⁴ *Quarrell v. Beckford*, 1 Madd. 269; *Lloyd v. Jones*, 12 Sim. 491; *Bennington v. Harwood*, Turn. & R. 477, 485; *Hubbell v. Moulson*, 53 N. Y. 225; 13 Am. Rep. 519; *Green v. Turner*, 38 Iowa, 112; *Pierce v. Robinson*, 13 Cal. 116.

very essential element of the equitable conception of a mortgage. If an instrument is once a mortgage, nothing, in general, can destroy the equitable right of redemption except a valid and complete foreclosure, or the bar arising expressly or by analogy from the statute of limitations, or conduct of the mortgagor amounting to an estoppel. Strictly speaking, redemption is the "buying back" and recovering the legal estate by the mortgagor after it has passed to the mortgagee. Under the original common-law theory, the redemption by the mortgagor took place, not only after the mortgagee had acquired the legal estate by the mortgage, but after he had taken possession of the mortgaged premises. The same conditions of the redemption still substantially exist in all the states which have adopted the *first* system as described in the preceding section II.¹ In those states which have adopted the *second* system, the mortgagor may have the same suit and the same relief whenever the mortgagee has actually taken possession; but such cases are quite rare, for the mortgagor is generally left in possession. It is, however, a settled doctrine in all these states that the mortgagor in possession may maintain a similar equitable suit whenever, from a dispute as to the amount due or any other cause, the mortgagee refuses to accept payment and to discharge the mortgage. The mortgagor can always come into a court of equity and obtain a decree removing the lien of the mortgage. Although this suit is uniformly termed a "suit to *redeem*," and the relief is called "redemption," yet it is really one to free the mortgagor's

¹ At any time before his right is cut off by foreclosure or barred by the statute of limitations, the mortgagor may maintain a suit for a redemption, in which an accounting is had, the amount of the debt still due is ascertained, and upon payment of this amount the mortgagee is decreed to reconvey. In several of the states adopting this general system, the original doctrine is so far relaxed that no reconveyance from the mortgagee is

necessary, but the legal estate vests in the mortgagor *ipso facto* of his payment: See *ante*, § 1187.

I would remark that in all the discussions of the text I am speaking only of the *equity* of redemption, which exists solely as a part of the equitable conception of mortgage. The *statutory* right of redeeming *after* foreclosure or execution sale, given by the legislation of certain states, forms no part of *equity* jurisprudence.

land from the encumbrance, to compel the mortgagee to accept the amount actually due, if any, and to discharge the mortgage of record.¹ The essential requisites of maintaining the suit are, that the mortgage debt should be due and payable, that the mortgagor should offer to pay whatever amount is due, and should pay the same when ascertained and fixed by the decree, and that the relief should be sought in equity.²

¹ The true nature of the relief, according to the system prevailing in the states of this second class, was recognized in *Daubenspeck v. Platt*, 22 Cal. 330, 335, per Norton, J.: "It is urged that an action to redeem does not lie in this state before foreclosure. There is no peculiarity in the laws of this state in reference to mortgages which takes from a mortgagor the right to redeem which exists in other states. Our statute enables a mortgagor to hold possession as owner until his title is divested by a foreclosure, but does not take from him the right to disencumber the land by a voluntary payment after a default to pay at the time provided in the mortgage. Although a redemption may not now be necessary after default in order to repurchase the legal title, it is still an important right in order to the full beneficial enjoyment of the property. Mortgages have long been treated as only liens, whether before or after default, and a bill to redeem has practically only been a *proceeding to remove the encumbrance*." See also *Cowing v. Rogers*, 34 Cal. 648, 654; *Koch v. Briggs*, 14 Cal. 256, 262; 73 Am. Dec. 651; *Cunningham v. Hawkins*, 24 Cal. 403, 410; 85 Am. Dec. 73.

² 2 Lead. Cas. Eq., 4th Am. ed., 1967, 2006, notes to *Thornbrough v. Baker*; 2 Jones on Mortgages, sec. 1052; *Tasker v. Small*, 3 Mylne & C. 63; *Gleaves v. Paine*, 1 De Gex, J. & S. 87; *Pearce v. Morris*, L. R. 5 Ch. 227; *Harding v. Pingey*, 10 Jur., N. S., 872; *Hughes v. Cook*, 34 Beav. 407; *Brown v. Cole*, 14 Sim. 427; *Burrowes v. Molloy*, 2 Jones & L. 521; *Randall v. Bradley*, 65 Me. 43; *Hall v. Gardner*, 71 Me. 233; *Welch v. Stearns*, 69 Me. 192; *Rowell v. Jewett*, 69 Me. 293; *Nevius v. Egbert*, 31 N. J. Eq. 460; *Parks v. Allen*, 42 Mich. 482; *Walker v. Carle-*

ton, 97 Ill. 582; *Wylie v. Welch*, 51 Wis. 351; *Grigg v. Banks*, 59 Ala. 311 (where the mortgagee has paid off a prior encumbrance); *Beach v. Cooke*, 28 N. Y. 508; 86 Am. Dec. 260; *Koch v. Briggs*, 14 Cal. 256, 262; 73 Am. Dec. 651; *Cunningham v. Hawkins*, 24 Cal. 403, 410; 85 Am. Dec. 73; *Daubenspeck v. Platt*, 22 Cal. 330, 335; *Cowing v. Rogers*, 34 Cal. 648, 654; *Lorenzana v. Camarillo*, 45 Cal. 125 (a mortgagor's right to redeem is not lost because he is no longer the owner of the premises). If a mortgagee pays off prior encumbrances he is subrogated to the rights of the holders thereof, and when the mortgagor redeems, he must pay them also; *Grigg v. Banks*, 59 Ala. 311; *Arnold v. Foot*, 7 B. Mon. 66; *Harper v. Ely*, 70 Ill. 581; *Robinson v. Ryan*, 25 N. Y. 320; *Silver Lake Bank v. North*, 4 Johns. Ch. 370; *Weld v. Sabin*, 20 N. H. 533; 51 Am. Dec. 240; *Page v. Foster*, 7 N. H. 392; *Jenness v. Robinson*, 10 N. H. 215. The right of redeeming can only be cut off by a valid, complete, strict foreclosure, or by a valid, complete foreclosure by sale; *Thompson v. Comm'rs*, 79 N. Y. 54; *Bennett v. Austin*, 81 N. Y. 308; *Pell v. Ulmar*, 18 N. Y. 139; *Olmsted v. Elder*, 5 N. Y. 144; *Sherwood v. Reade*, 7 Hill, 431; *Ward v. Seymour*, 51 Vt. 320; *Gilson v. Whitney*, 51 Vt. 552; *Winton's Appeal*, 87 Pa. St. 77; *Parks v. Allen*, 42 Mich. 482; *Wylie v. Welch*, 51 Wis. 351; *Hull v. McCall*, 13 Iowa, 467. Persons otherwise entitled, who were not made parties to the suit, may therefore redeem after and notwithstanding a foreclosure and sale; *Ibid.*; *Miner v. Beekman*, 50 N. Y. 337; *Noyes v. Hall*, 97 U. S. 34; *Endel v. Leibrock*, 33 Ohio St. 254; *Avery v. Ryerson*, 34 Mich. 362; *Hasselman v. McKernan*, 50 Ind. 441;

§ 1220. **The Same. By Other Persons.**—Any person who holds a legal estate in the mortgaged premises, or in any part thereof, derived through, under, or in privity with the mortgagor, and any person holding either a legal or equitable lien on the premises, or any part thereof, under or in privity with the mortgagor's estate, may also in like manner redeem from the prior mortgage. No such redemption, however, is possible unless the mortgage debt is due and payable, nor unless the mortgage is wholly redeemed by payment of the entire amount of the mortgage debt. The debt being a unit, no party interested in the whole premises, or in any portion of them, can compel the mortgagee to accept a part of the debt, and to relieve the property *pro tanto* from the lien. Furthermore, if the person redeeming has only a partial interest in the premises, and there are other partial owners also interested in having the lien of the mortgage removed from their estates,—such as co-owners, life tenants, reversioners, remaindermen, and the like,—he cannot compel them in the first instance to advance their proportionate shares for the purpose of paying off the debt; he must himself redeem the whole mortgage, and his only equity against them consists in his right to enforce the mortgage upon *their* estates as a security for obtaining a *subsequent* contribution.¹

Shaw v. Heisey, 48 Iowa, 468; Gower v. Winchester, 33 Iowa, 303; Hodgen v. Guttery, 58 Ill. 431; Strang v. Allen, 44 Ill. 428; Pratt v. Frear, 13 Wis. 462; Green v. Dixon, 9 Wis. 532; Chandler v. Dyer, 37 Vt. 345; Wiley v. Ewing, 47 Ala. 418; [Hunt v. Makemson, 56 Tex. 9; Johnson v. Hosford, 110 Ind. 572; American Buttonhole etc. Co. v. Loan Ass'n, 61 Iowa, 464; Bunce v. West, 62 Iowa, 81; Spurgin v. Adamson, 62 Iowa, 661; Tucker v. Jackson, 60 N. H. 214. See, however, Worthington v. Wilmot, 59 Miss. 608. That a person of whose interest the mortgagee had no notice, as the holder, by unrecorded assignment, of a junior encumbrance, may have no such right to redeem, see Reel v. Wil-

son, 64 Iowa, 13.] The purchaser at the foreclosure sale may maintain an action against a subsequent mortgagee who was not made a party, to compel him to redeem within a certain time or be foreclosed: Shaw v. Heisey, *supra*.

¹ In its most general terms, the doctrine may be briefly stated that all persons interested in the premises, and who would be prejudiced by a foreclosure, have a right to redeem. Persons who claim under a title paramount or adverse to the mortgagor's would not be affected by a foreclosure, and cannot redeem. It is plain, also, that there can be no *complete* redemption until the whole mortgage debt is due and payable. If one prior installment

§ 1221. Rights of Contribution and of Exoneration upon Redemption. — In general, whenever redemption by

is due, and the mortgagee is entitled to foreclose for its non-payment, he cannot be compelled to accept the installments not yet due; the only possible redemption would be a payment of the amount then due, leaving the mortgage in full force with respect to the subsequent installments. In illustration of the text, see 2 Lead. Cas. Eq., 4th Am. ed., 1967-1969, 2006; 2 Jones on Mortgages, secs. 1055-1069 (who may redeem); 1070-1081 (requisites of redemption). The following list will show the various classes of persons who may redeem as well in this country as in England: *Grantees* or *assignees* of the mortgagor, even when *volunteers*; Howard v. Harris, 1 Vern. 190; Winterbottom v. Tayloe, 2 Drew. 279; *devisees*: Lewis v. Nangle, 2 Ves. Sr. 431; Catley v. Sampson, 33 Beav. 551; *heirs*: Pym v. Bowremare, 3 Swans. 241, note; Lloyd v. Wait, 1 Phill. Ch. 61; a *joint tenant*, who must redeem the whole: Waugh v. Land, Coop. 129; Wynne v. Styan, 2 Phill. Ch. 303, 306; a *tenant in common*: Wynne v. Styan, *supra*; a *tenant for life*: Wicks v. Scrivens, 1 Johns. & H. 215; a *tenant in tail*: Playford v. Playford, 4 Hare, 546; *remaindermen or reversioners*: Raffety v. King, 1 Keen, 601, 617; a *dowress*: Swannock v. Lyford, Amb. 6; Jackson v. Parker, Amb. 687; the *superior lord*, or the *crown*, in case of escheat or forfeiture: Viscount Downe v. Morris, 3 Hare, 394; Burgess v. Wheate, 1 Eden, 177, 210, 256; Beale v. Symonds, 16 Beav. 406; Att'y-Gen. v. Crofts, 4 Brown Parl. C. 136; a *creditor* who is plaintiff in a creditor's suit, after a decree: Christian v. Field, 2 Hare, 177; *judgment creditors*: Stonehewer v. Thompson, 2 Atk. 440; Neate v. Duke of Marlborough, 3 Mylne & C. 407; Jefferys v. Dickson, L. R. 1 Ch. 183; Mildred v. Austin, L. R. 8 Eq. 220; In re Cowbridge R'y, L. R. 5 Eq. 413; Guest v. Cowbridge R'y, L. R. 6 Eq. 619; Thornton v. Finch, 4 Giff. 505; *subsequent mortgagees*: Fell v. Brown, 2 Brown Ch. 276; Palk v. Lord Clinton, 12 Ves. 48; Rhodes v. Buckland, 16 Beav. 212; Smith v. Green, 1 Coll. C. C. 555; *lunatic's committee*: Ex parte Grimstone, Amb. 706; *legatees* whose

legacies are charged on the mortgaged premises: Faulkner v. Daniel, 3 Hare, 199; Batchelor v. Middleton, 6 Hare, 75; *any person having even a partial interest*: Pearce v. Morris, L. R. 5 Ch. 227. American cases: Persons having an estate in the land as *heirs*, *devisees*, *grantees*, *tenants for life*, *dowress*, *co-owners*, etc.: Smith v. Manning, 9 Mass. 422; Lamson v. Drake, 105 Mass. 564; Davis v. Wetherell, 13 Allen, 60; 90 Am. Dec. 177; Beach v. Cooke, 28 N. Y. 508; 86 Am. Dec. 260; Mills v. Van Voorhies, 20 N. Y. 412; Bell v. The Mayor, 10 Paige, 49; Denton v. Nanny, 8 Barb. 618; Mills v. Van Voorhis, 23 Barb. 125; Cunningham v. Knight, 1 Barb. 399; Opdyke v. Bartles, 11 N. J. Eq. 133; McArthur v. Franklin, 16 Ohio St. 193; Beach v. Shaw, 57 Ill. 17. [See also Butts v. Broughton, 72 Ala. 294; Ohmer v. Boyer, 89 Ala. 273; Kenyon v. Segar, 14 R. I. 490.] Persons having subsequent encumbrances: *Judgment creditors*: Bigelow v. Willson, 1 Pick. 485; Niagara Bank v. Roosevelt, 9 Cow. 409; Dabney v. Green, 4 Hen. & M. 101; 4 Am. Dec. 503. [See also Cramer v. Watson, 73 Ala. 127; Fitch v. Wetherbee, 110 Ill. 475; Kelly v. Longshore, 78 Ala. 203; (purchaser at execution sale of equity of redemption).] *Subsequent mortgagees*: Frost v. Yonkers Sav. Bank, 70 N. Y. 553; 26 Am. Rep. 627; Twombly v. Cassidy, 82 N. Y. 155; Haines v. Beach, 3 Johns. Ch. 459; Rogers v. Herron, 92 Ill. 583; Hodgen v. Guttery, 58 Ill. 431; Beach v. Shaw, 57 Ill. 17; Sager v. Tupper, 35 Mich. 134; Avery v. Ryerson, 34 Mich. 362; Hasselman v. McKernan, 50 Ind. 441; Renard v. Brown, 7 Neb. 499; Manning v. Markel, 19 Iowa, 103; Scott v. Henry, 13 Ark. 112; Wiley v. Ewing, 47 Ala. 418; Hill v. White, 1 N. J. Eq. 435; but see Bigelow v. Cassidy, 26 N. J. Eq. 557. [See also Hunt v. Makemson, 56 Tex. 9; Johnson v. Hosford, 110 Ind. 572.] Any person having an interest in the premises subsequent to the mortgage: Averill v. Taylor, 8 N. Y. 44; Boqut v. Coburn, 27 Barb. 230; Platt v. Squire, 12 Met. 494; Farnum v. Metcalf, 8 Cush. 46. [See also Buser v. Shepard, 107

one of the above-mentioned persons operates as an equitable assignment of the mortgage to himself, he can keep the lien of it alive as security against others who are also interested in the premises, and who are bound to contribute their proportionate shares of the sum advanced by him, or are bound, it may be, to wholly exonerate him from and reimburse him for the entire payment. The doctrine has already been stated, that where a party interested in the premises, who is not personally and primarily liable as the principal debtor for the whole mortgage debt, pays the mortgage to the holder thereof, he is entitled to regard the transaction as an equitable assignment of the mortgage to himself, and to keep it alive as security of his own rights against others who are owners of or interested in the land.¹ Any such person who redeems, no matter how small a portion of the premises he may own, or how partial may be his interest, must redeem the entire mortgage by paying the whole mortgage debt. The doctrine of contribution among all those who are interested in having the mortgage redeemed, in order to refund the redeンプtor the excess of his payment over and above his own proportionate share, and the doctrine of equitable assignment in order to secure such contribution, are the efficient means by which equity completely and most beautifully works out perfect justice and equality of burden, under these circumstances. The right of contribution arises only *after* a redemption, and necessarily depends upon the equities subsisting between all those persons who have an interest in the premises subject to the mortgage, and who therefore have a *common*, but not

Ind. 417; Sellwood v. Gray, 11 Or. 534.] The whole debt must be paid: 2 Jones on Mortgages, sec. 1072; Palk v. Lord Clinton, 12 Ves. 48; Marquis of Cholmondeley v. Lord Clinton, 2 Jacob & W. 1, 189; Johnson v. Candage, 31 Me. 28; Lamb v. Montague, 112 Mass. 352; Lanning v. Smith, 1 Pars. Cas. 13; Knowles v. Rablin, 20 Iowa, 101; Gliddon v. Andrews, 14 Ala. 733; and see cases cited above, in this note.

¹ See *ante*, §§ 1211, 1212. This doctrine has its simplest and most frequent application in cases of redemption by a person who is owner of or interested in a part of the mortgaged premises,—as by a co-owner, an owner of a separate parcel of the land, etc.; or by a person who has only a *partial* interest in the premises,—as by a life tenant, a dowress, a reversioner, a tenant for years, etc.

necessarily an *equal*, interest in being relieved from the burden of the mortgage.¹

§ 1222. 1. **Where their Equities are Equal.**—It is a general doctrine of equity that where a common charge rests upon a fund which belongs to several owners, who stand upon a footing of equality with respect to their individual titles and relations with the holder of the charge, the burden should rest ratably upon each separate portion of the fund; and if the owner of one portion, for the purpose of protecting his own interest, pays off the common charge, he is entitled to call upon the other owners to contribute their proportionate shares of the amount thus paid. This doctrine is a simple application of the maxim, Equality is equity.² Whenever, therefore, a mortgage rests upon land which is owned by several persons in such a manner that their equities as between themselves are equal, and one of them redeems from the mortgage, he is entitled to a *pro rata* contribution from the other owners, and may keep the lien of the mortgage alive, by equitable assignment, as security for such contributions.³ In order, however, that this liability to a

¹ The nature and extent of the liability to contribute are primarily independent of the mortgagee, and depend upon or are controlled by the equities subsisting between the various parties interested in having the mortgage redeemed, which equities primarily arise from their several relations with the mortgagor, or from their dealings with each other. The mortgagee may, however, by releasing some one of these parties, modify or restrict his own right of enforcing the mortgage against the others, and may thus disturb the equities otherwise subsisting among them, and as a necessary consequence may alter their normal liability of contribution. Any adequate statement of the doctrine concerning contribution requires, therefore, some examination of the rules determining the equities between the various persons who are owners of or interested in the mortgaged premises, and of the effects upon these equities produced by a

release from the mortgagee to any one or more of them. I shall briefly discuss the three following cases: 1. Where the equities among the owners are equal; 2. Where their equities are unequal; 3. The effect in either case of a release by the mortgagee given to one of such parties.

² See *ante*, vol. 1, §§ 405, 406, 407, 411.

³ Among the instances where the equities are equal, and which fall within this rule, are the following: Two or more persons, co-owners of land, jointly give a mortgage thereon; land covered by a mortgage, on the death of the mortgagor, descends to his several heirs, or is devised by him to several devisees, who take it as co-owners; a mortgagor conveys the premises by one deed to several grantees, who become co-owners of undivided shares; a mortgagor, by separate, similar, and simultaneous deeds, conveys all the mortgaged premises, in separate and distinct

ratable contribution may exist under such a condition of ownership, it is essential that the equities of all the owners should be equal.¹

§ 1223. 2. Where their Equities are Unequal — Tenants for Life or for Years. — In the preceding case the titles of the several owners are simultaneous in their time of acquisition, and are the same in kind, the only difference being in the value of their respective interests. In the case now to be considered, the titles are also simultaneous,² and the inequality consists in the fact that the estate held in the mortgaged premises by one party is only partial, while that held by the other is absolute or in fee. The particular inequality referred to exists when the land subject to the mortgage is held by A as a tenant for life or for years, and by B as a remainderman or re-

parcels, to several separate grantees, neither of whom assumes payment of the whole mortgage, nor any part thereof, so as to disturb the equality of the equities between them, and the like: *Bailey v. Myrick*, 50 Me. 171; *Aiken v. Gale*, 37 N. H. 501, 505; *Town of Salem v. Edgerly*, 33 N. H. 46; *Towle v. Hoit*, 14 N. H. 61; *Taylor v. Bassett*, 3 N. H. 294; *Wheeler v. Willard*, 44 Vt. 640; *Gibson v. Crehore*, 5 Pick. 146; *Saunders v. Frost*, 5 Pick. 259; 16 Am. Dec. 394; *Allen v. Clark*, 17 Pick. 47; *Parkman v. Welch*, 19 Pick. 231; *Chase v. Woodbury*, 6 Cush. 143; *Taylor v. Porter*, 7 Mass. 355; *Young v. Williams*, 17 Conn. 393; *Lyon v. Robbins*, 45 Conn. 513; *Stevens v. Cooper*, 1 Johns. Ch. 425; 7 Am. Dec. 499; *Cheesebrough v. Millard*, 1 Johns. Ch. 409; 7 Am. Dec. 494; *Lawrence v. Cornell*, 4 Johns. Ch. 542; *Sawyer v. Lyon*, 10 Johns. 32; *Johnson v. White*, 11 Barb. 194; *Stroud v. Casey*, 27 Pa. St. 471; *Simpson v. Gardiner*, 97 Ill. 237; *Briscoe v. Power*, 47 Ill. 447; *Kingsbury v. Buckner*, 70 Ill. 514; *Blue v. Blue*, 38 Ill. 9; 87 Am. Dec. 267; *McLaughlin v. Estate of Curtis*, 27 Wis. 644; *Bates v. Ruddick*, 2 Iowa, 423; 65 Am. Dec. 774; *Beall v. Barclay*, 10 B. Mon. 261. [See also *Hall v. Morgan*, 79 Mo. 47; *Beck v. Tarrant*, 61 Tex. 402

(*vendor's lien*); *Peck v. Peck*, 110 N. Y. 64, 74.]

¹ The equality may be disturbed in various ways. If the mortgagor should convey the land by three simultaneous deeds to A, B, and C, and A should in his deed assume payment of the whole mortgage as a part of the consideration, A's parcel would not only be primarily chargeable with the entire mortgage, but he would himself become the principal debtor. If A should pay off the mortgage, he would have no right of contribution against the others; on the contrary, if either B or C should redeem, he would be entitled to a complete exoneration as against A: See *Zabriskie v. Salter*, 80 N. Y. 555. The equality might also be lost if the grantee of one parcel neglected to put his deed on record, and those of the other grantees being recorded, one of them conveyed his portion to a second grantee for value and without notice: *Chase v. Woodbury*, 6 Cush. 143; and see *Layman v. Willard*, 7 Ill. App. 183.

² The inequality of equities resulting from the fact that the titles of the several owners are not simultaneous is examined in the next subsequent paragraphs; and it will be seen that such inequality prevents any common ratable contribution.

versioner in fee.¹ The general doctrine of contribution applies to such owners, but is modified in its operation by the new element of inequality in the nature of their respective estates. As has already been shown, the holder of a partial interest is always compelled to redeem the whole mortgage.² By a settled rule of the law, the life tenant, A, is bound to pay the annual interest on the mortgage accruing during his own lifetime,—or if a tenant for years, during his term. This is his own debt, and for what he thus pays in keeping down the interest he is not entitled to any contribution from B, the owner in fee.³ When, therefore, A redeems the mortgage, a certain part of the money paid to the mortgagee would be the equivalent of the annual interest on the mortgage which A was obliged to pay at all events, and this part, being his own debt, need not be refunded to him by B; but all of the mortgage debt over and above such part equitably belongs to B to pay; it is the share which should fall upon him by virtue of his reversionary interest. The problem then is to ascertain what portion of the total mortgage debt represents the annual interest on the mortgage which A is bound to pay during his life; subtracting that amount

¹ This general condition of ownership includes the following particular cases: When the land subject to the mortgage is conveyed or devised by the mortgagor to A for life, and on his death to B in fee; also, when a part of the land subject to the mortgage is conveyed to or held by A for life, while the reversion of such part, together with all the residue of the land, are conveyed to or held by B in fee; as, for example, when, on the death of the mortgagor or of any subsequent owner, the whole land subject to the mortgage passes to his heirs or devisees, and his widow is entitled to dower in one third thereof, or when the mortgagor is a married woman, and on her death her husband becomes tenant for life of the whole land by the curtesy, while the reversion in fee descends to her heirs; and finally, when the land, or a part thereof, is held by A as a tenant

for years, and the reversion in fee by B.

² See *ante*, § 1220; *Lyon v. Robbins*, 45 Conn. 513; *Spencer v. Waterman*, 36 Conn. 342; *Lamson v. Drake*, 105 Mass. 564, 567; *McCabe v. Bellows*, 7 Gray, 148; 66 Am. Dec. 467; *Brown v. Lapham*, 3 Cush. 551; *Bell v. The Mayor*, 10 Paige, 49. [But it is held that when the mortgage and the equity of redemption unite in the same person, a dowress may redeem her dower by paying only her proportion of the debt; because if she paid the whole debt, she would be immediately entitled, by subrogation, to have all above her proportional part refunded: *Kenyon v. Segar*, 14 R. I. 490.]

³ *Ibid.*; *Squire v. Compton*, 2 Eq. Cas. Abr. 387; *Swaine v. Perine*, 5 Johns. Ch. 482; 9 Am. Dec. 318; [*Ohmer v. Boyer*, 89 Ala. 273; *Wheeler v. Addison*, 54 Md. 41.]

from the total sum, the balance is the share which B must contribute, and for which A may hold the mortgage as a lien on the land. An element of uncertainty — the duration of A's life — is inherent in the problem; but the courts, both of England and of this country, have adopted the standard "life tables" as the basis of calculation in all such cases. The rule is settled, that the present worth of an annuity equal to the annual interest running during the number of years which constitute his expected life represents the sum which A is liable to pay as *his* individual indebtedness; the balance, after subtracting this sum from the mortgage debt actually paid to the mortgagee, is the amount which B is liable to contribute.¹ When the life tenant, A, is a dowress, the present worth is calculated upon the basis of one third of the annual interest accruing on the mortgage of the entire premises. If the remainderman or reversioner, B, redeems, the rule is the exact converse of the one above stated.

¹ Knowing A's age, the "life tables" give the number of years he has yet to live, which, for the purposes of the rule, are taken as absolutely certain and correct. He is therefore bound to pay the annual interest on the mortgage for the number of years disclosed by the tables. Knowing the amount of interest due each year, and the number of years it must be paid, the "annuity tables" will give the present worth of such sum payable annually for the required number of years. This present worth is A's proper share; subtracting it from the whole amount paid to the mortgagee, the balance is the sum payable by B. The rule thus formulated applies whenever the entire premises subject to the mortgage are held by A for life and the fee in remainder or reversion is held by B; as, for example, when A is the husband, tenant by the curtesy, and B represents the heirs. Where A is a widow-dowress, a slight modification in the rule is necessary. Since she is entitled to dower in only one third of the mortgaged premises, she is bound to keep down only one third of the interest on

the mortgage. The present worth of an annuity for her expected life equal to one third of the annual interest represents the amount of her individual liability. This modification indicates the rule applicable to all life tenants of a portion only of the mortgaged premises. When A is a tenant for years, no resort to the life tables is necessary. The present worth of the annuity must be calculated for the number of years constituting the residue of his term. Whenever the reversioner or remainderman, B, redeems the mortgage, the rule is plainly the exact converse of that above stated: *Carll v. Butman*, 7 Me. 102, 105; *Houghton v. Hapgood*, 13 Pick. 154, 158; *Gibson v. Crehore*, 5 Pick. 146; *Swaine v. Perine*, 5 Johns. Ch. 482, 490; 9 Am. Dec. 318; *Bell v. The Mayor*, 10 Paige, 49; *Jones v. Sherard*, 2 Dev. & B. Eq. 179, 189; *Foster v. Hilliard*, 1 Story, 77, 90; *Lyon v. Robbins*, 45 Conn. 513; *Raynor v. Raynor*, 21 Hun, 36. As to use of "life tables," see *Graves v. Cochran*, 68 Mo. 74; *Unger v. Leiter*, 32 Ohio St. 210; *Nye v. Patterson*, 35 Mich. 413.

§ 1224. 3. **Inequality of Equities where Titles are not Simultaneous — Between Mortgagor and his Grantee of a Parcel — Between Successive Grantees — Inverse Order of Alienation.** — Where the owners of the premises subject to the mortgage hold under the mortgagor by titles not simultaneous, but successive in order of time, an entirely different inequality of equities among them is introduced; a priority results which not only destroys the right of ratable *contribution* when one of them redeems, but even creates in favor of some a right of *exoneration* as against the others. The foundation of this doctrine is found in the equities subsisting between the mortgagor and his grantee of a part of the mortgaged premises. Whenever the mortgagor conveys a portion of the land "subject to" a mortgage by a warranty deed, and retains the residue of the land in his own hands, that portion of the land retained by the mortgagor becomes, as between himself and his grantee at all events, the fund primarily liable for the whole mortgage debt. The form of the deed shows that the grantee not only assumed payment of no portion of the mortgage debt, but did not buy his parcel even *subject to* the mortgage; and the entire burden was therefore left upon the portion of land remaining in the ownership of the mortgagor. Whatever be the rights of the mortgagee to resort to either or both of the parcels, it is plainly the equitable duty of the mortgagor to assume the whole debt, and thus to free the grantee's parcel from the lien. If, therefore, the mortgagor pays off the mortgage, its lien is ended, and he can claim no contribution from the grantee; if, on the other hand, the grantee redeems, he is entitled to keep the lien alive for the purpose of enforcing an exoneration by the mortgagor, at least to the extent of the value of the premises remaining in the mortgagor's hands and subject to the encumbrance. This view of the equities subsisting between the mortgagor and his own grantee seems to be

universally adopted.¹ The doctrine being thus established that the grantee obtains an equitable priority as against the mortgagor, and the portion of the mortgaged premises left in the mortgagor's hands is primarily chargeable with the whole mortgage, the inference is natural, even if not necessary, that the same burden follows this portion, when subsequently conveyed by the mortgagor to a second grantee. If the mortgagor conveys one half of the mortgaged premises by a warranty deed to A, his own half is equitably charged with the entire debt, and A has as against him the priority. When the mortgagor afterwards conveys his half by a similar deed to B, that transaction cannot affect A's pre-existing priority, with *respect to the parcel thus conveyed as the primary fund for payment*, and B cannot acquire any higher equities than those possessed by his immediate grantor; he succeeds to the exact position of the mortgagor towards the first grantee, A. As between the two grantees, therefore, the parcel conveyed to the second grantee, B, is primarily liable for the whole mortgage debt; he can claim no contribution from A, but on the other hand, A may be entitled to *exoneration* against the portion held by him. If this reasoning is correct, it necessarily applies to any number of successive grantees to whom the mortgagor has conveyed separate parcels of the mortgaged premises, and determines these equities among them, whether the mortgagor has conveyed away all the land covered by the mortgage, or retains a portion himself, and whether their respective parcels are of equal or unequal values. In most of the states, though not in quite all, the courts

¹ 2 Washburn on Real Property, 4th ed., p. 202, sec. 5; 2 Jones on Mortgages, secs. 1091, 1092; 2 Lead. Cas. Eq., 4th Am. ed., 291, 305, notes to Aldrich v. Cooper. The rule applies not only to the mortgagor, but also to his heir: Harbert's Case, 3 Coke, 11 b; Wallace v. Stevens, 64 Me. 225; Hahn v. Behrman, 73 Ind. 120; Clowes v. Dickenson, 5 Johns. Ch

235; Beard v. Fitzgerald, 105 Mass. 134; Chase v. Woodbury, 6 Cush. 143; Kilborn v. Robbins, 8 Allen, 466; Bradley v. George, 2 Allen, 392; Cheever v. Fair, 5 Cal. 337; Root v. Collins, 34 Vt. 173 (mortgagor and his vendee in a land contract); and cases in next following note; see Judson v. Dada, 79 N. Y. 373.

have adopted this reasoning, and have settled the equities of the parties in such a condition of fact by a general rule: Whenever the mortgagor has conveyed separate parcels of the mortgaged premises by warranty deeds to successive grantees, and there are no special provisions in any of their deeds, and no other dealings between themselves or with the mortgagor which disturb the equities otherwise existing, a priority results, depending upon the order of conveyance. As between the mortgagor and all the grantees, the parcel in his hands, if any, is primarily liable for the whole mortgage debt, and should be exhausted before having recourse to any of theirs; as between the grantees, their parcels are liable in the inverse order of their alienation, and any parcel chargeable first in order must be exhausted before recourse is had to the second.¹ This inequality of equities plainly destroys all

¹ In many of these states the rule is applied directly to the mortgagee, and regulates his mode of foreclosure; either by statute, or by rule of court, or by decisions, he is compelled to frame his decree of sale, and to sell the mortgaged premises in compliance with this rule. In other states, the mortgagee is not thus directly controlled, but the rule is applied to the other parties, and regulates the mode in which their equities are worked out, as among themselves, by redemption and exoneration. A single simple case will illustrate. A mortgagor divides the land subject to the mortgage into five lots. He conveys lot 1 by warranty deed to A, and afterwards, by successive deeds, lots 2, 3, and 4, to B, C, and D, and retains lot 5 himself. Lot 5 is then the primary fund, and must be first sold, and if it fully satisfies the mortgage debt, the four other lots are freed. If its proceeds are not sufficient, then lot 4 must be sold; and only so far as is necessary to satisfy the mortgage debt, lots 3, 2, and 1 are sold in the inverse order of their alienation: 2 Washburn on Real Property, 4th ed., pp. 202-206, secs. 5, 5 a; 2 Jones on Mortgages, secs. 1620-1632; 2 Lead. Cas. Eq., 4th Am. ed., 291-305, notes to Aldrich v. Cooper; Randall v. Mallett, 14 Me.

51; Holden v. Pike, 24 Me. 427; Cushing v. Ayer, 25 Me. 383; Shepherd v. Adams, 32 Me. 63; Town of Salem v. Edgerly, 33 N. H. 46; Aiken v. Gale, 37 N. H. 501; Brown v. Simons, 44 N. H. 475; 45 N. H. 211; Gates v. Adams, 24 Vt. 70; Lyman v. Lyman, 32 Vt. 79; 76 Am. Dec. 151; Root v. Collins, 34 Vt. 173; Chase v. Woodbury, 6 Cush. 143; George v. Kent, 7 Allen, 16; Kilborn v. Robbins, 8 Allen, 466; George v. Wood, 9 Allen, 80; 85 Am. Dec. 741; Beard v. Fitzgerald, 105 Mass. 134; Sanford v. Hill, 46 Conn. 42; Gill v. Lyon, 1 Johns. Ch. 447; Clowes v. Dickenson, 5 Johns. Ch. 235; James v. Hubbard, 1 Paige, 228, 234; Jenkins v. Freyer, 4 Paige, 47; Guion v. Knapp, 6 Paige, 35; 29 Am. Dec. 741; Jumel v. Jumel, 7 Paige, 591; Skeel v. Spraker, 8 Paige, 182; Farmers' L. & T. Co. v. Maltby, 8 Paige, 361; Patty v. Pease, 8 Paige, 277; 35 Am. Dec. 683; Schryver v. Teller, 9 Paige, 173; Rathbone v. Clark, 9 Paige, 648; Kellogg v. Rand, 11 Paige, 59; Stuyvesant v. Hall, 2 Barb. Ch. 151; Ferguson v. Kimball, 3 Barb. Ch. 616; Ex parte Merrian, 4 Denio, 254; Howard Ins. Co. v. Halsey, 4 Sand. 565; Weaver v. Toogood, 1 Barb. 238; La Farge Ins. Co. v. Bell, 22 Barb. 54; Crafts v. Aspinwall, 2 N. Y. 289;

right and liability of *ratable contribution*. If the mortgagor pays off the mortgage, or if the parcel remaining in his hands is sold in full satisfaction of it, he cannot

Howard Ins. Co. v. Halsey, 8 N. Y. 271; 59 Am. Dec. 478; Ingalls v. Morgan, 10 N. Y. 178; Belmont v. Coman, 22 N. Y. 438; 78 Am. Dec. 213; Zabriskie v. Salter, 80 N. Y. 555; Hopkins v. Wolley, 81 N. Y. 77; Kendall v. Niebuhr, 58 How. Pr. 156; 13 Jones & S. 542; Coles v. Appleby, 22 Hun, 72; 87 N. Y. 114, 121; Cowden's Estate, 1 Pa. St. 267; Carpenter v. Koons, 20 Pa. St. 222; Hiles v. Coult, 30 N. J. Eq. 40; Hill's Adm'r v. McCarter, 27 N. J. Eq. 41; Mut. Life Ins. Co. v. Boughrum, 24 N. J. Eq. 44; Mount v. Potts, 23 N. J. Eq. 188; Weatherby v. Slack, 16 N. J. Eq. 491; Keene v. Munn, 16 N. J. Eq. 398; Gaskill v. Sine, 15 N. J. Eq. 400; 78 Am. Dec. 103; Winters v. Henderson, 6 N. J. Eq. 31; Black v. Morse, 7 N. J. Eq. 509; Witkoff v. Davis, 4 N. J. Eq. 224; Britton v. Updike, 3 N. J. Eq. 125; Shannon v. Marselis, 1 N. J. Eq. 413, 421; Jones v. Myrick's Ex'rs, 8 Gratt. 179; Henkle's Ex'x v. Allstadt, 4 Gratt. 284; Conrad v. Harrison, 3 Leigh, 532; Stoney v. Shultz, 1 Hill Eq. 465; 27 Am. Dec. 429; Meng v. Houser, 13 Rich. Eq. 210; Norton v. Lewis, 3 S. C. 25; Cumming v. Cumming, 3 Ga. 460; Ritch v. Eichelberger, 13 Fla. 169; P. & M. Bank v. Dundas, 10 Ala. 661; Mobile Etc. Co. v. Huder, 35 Ala. 713; Miller v. Rogers, 49 Tex. 398; Hall v. Edwards, 43 Mich. 473; McKinney v. Miller, 19 Mich. 142; Ireland v. Woolman, 15 Mich. 253; Cooper v. Bigly, 13 Mich. 463; Mason v. Payne, Walk. Ch. 459; Hahn v. Behrman, 73 Ind. 120; Evansville Gas-light Co. v. State, 73 Ind. 219; 38 Am. Rep. 129; McCullum v. Turpie, 32 Ind. 146; Aiken v. Bruen, 21 Ind. 137; Day v. Patterson, 18 Ind. 114; Marshall v. Moore, 36 Ill. 321, 326; Matteson v. Thomas, 41 Ill. 110; Iglehart v. Craue, 42 Ill. 261; Dodds v. Snyder, 44 Ill. 53; Lock v. Fulford, 52 Ill. 166, 169; Tomkins v. Wiltberger, 56 Ill. 385, 391; Sumner v. Waugh, 56 Ill. 531; Niles v. Harmon, 80 Ill. 396; Hawhe v. Snyder, 86 Ill. 197; Meacham v. Steele, 93 Ill. 135; Warner v. De Witt Co. Bank, 4 Ill. App. 305; Erlinger v. Boul, 7 Ill. App. 40; Layman v. Willard, 7 Ill. App. 183; Aiken v. Milwaukee etc. R'y, 37 Wis. 469; State v. Titus, 17 Wis. 241; Worth v. Hill, 14 Wis. 559; Ogden v. Glidden, 9 Wis. 46; Johnson v. Williams, 4 Minn. 260, 268; Cal. Civ. Code, sec. 2899. [See also Welling v. Ryerson, 94 N. Y. 98; Mahagan v. Mead, 63 N. H. 570; Deavitt v. Judevine, 60 Vt. 695; Milligan's Appeal, 104 Pa. St. 503; National Bank of Middletown v. Trustees, 5 Del. Ch. 596; Threshing Machine Co. v. Mitchell, 74 Mich. 679. For application of the rule to enforcement of other liens, see Miller v. Holland, 84 Va. 652; Hunt v. Ewing, 12 Lea, 519 (judgment lien); Merritt v. Richey, 97 Ind. 236 (same); Ritter v. Cost, 99 Ind. 801. If prior purchasers fail to invoke the protection of this rule before foreclosure it is not binding on the courts: Prickett v. Sibert, 75 Ala. 315; Dobbins v. Wilson, 107 Ill. 17.] The doctrine also applies where the mortgagor has conveyed the whole land subject to the mortgage to A, and A in turn conveys in parcels to successive grantees: See Guion v. Knapp, 6 Paige, 35; 29 Am. Dec. 741; Wikoff v. Davis, 4 N. J. Eq. 224. This rule is rejected by the courts of Iowa and of Kentucky, which hold that the equities of the grantees as between themselves are equal, as though their deeds were simultaneous, and that they are all liable to contribute ratably: Barney v. Myers, 28 Iowa, 472; Massie v. Wilson, 16 Iowa, 391; Bates v. Ruddick, 2 Iowa, 423; 65 Am. Dec. 774; Dickey v. Thompson, 8 B. Mon. 312; Campbell v. Johnston, 4 Dana, 177, 182; Poston v. Eubank, 3 J. J. Marsh. 42. [See also Huff v. Farwell, 67 Iowa, 298; but that a parcel retained by the mortgagor is first chargeable, see Windsor v. Evans, 72 Iowa, 692; Mickley v. Tomlinson, 79 Iowa, 383;] and the same view seems to be taken in Ohio: Green v. Ramage, 18 Ohio, 428; 51 Am. Dec. 458; but see Cary v. Folsom, 14 Ohio, 365; Comm. Bank v. West. R. Bank, 11 Ohio, 444; 33 Am. Dec. 739.

call upon his grantees for any reimbursement. In like manner, if the parcel belonging to a grantee who was a later purchaser is sold, he can claim no contribution from any grantee who was prior in time, since his parcel is itself primarily liable as between the two. In place of contribution, a right of exoneration may arise. It has already been shown how the grantee, under such circumstances, may be exonerated by the mortgagor; in like manner, a right of exoneration may arise among the successive grantees in favor of one whose conveyance was earlier against those who were later in point of time. The exoneration will be complete or partial, according to the circumstances of the case.¹

§ 1225. **The Same. What Circumstances Disturb These Equities and Defeat This Rule.** — The doctrine stated in the foregoing paragraph is one of purely equitable origin, and is not an absolute rule of law, and if the peculiar equitable reasons on which it rests are wanting, it ceases to operate.² Whether it does or does not apply to any particular case may be certainly determined by a careful consideration of the following principles. The doctrine in its full scope and operation primarily depends upon the relation subsisting between the mortgagor, or other

¹ It should be constantly remembered that the mortgagee possesses the absolute right to enforce the security of the mortgage for the whole amount thereof, if necessary, against all the parcels in the hands of all the grantees. A single simple case will illustrate this equity of exoneration. A mortgagor conveys one half the premises by warranty deed to A, and afterwards the other half to B. As between the two grantees, the mortgage must be first enforced against B's parcel, but if its proceeds are not sufficient to satisfy the debt, then resort must be had to A's half. In other words, A's parcel continues liable for so much of the mortgage debt as exceeds the value of B's parcel. This liability indicates the true measure and extent of A's right of exoneration against B. If A redeems the mortgage, or if A's parcel is sold

first by the mortgagee, he is not necessarily entitled to a complete exoneration by B; he is only entitled to a complete exoneration when B's parcel equals or exceeds in value the amount of the mortgage debt, so that it would have satisfied the mortgage and freed A's land from the burden. If the mortgage debt exceeds the value of B's parcel, A is entitled to exoneration from such an amount thereof as equals the value of B's land; the balance of the debt over and above that amount is A's individual burden, chargeable on his own land. The same reasoning clearly applies to any number of successive grantees and determines the rights of exoneration among them: See cases in the last preceding note.

² See *Kendall v. Woodruff*, 87 N. Y. 1, 7, per Folger, C. J.

owner of the entire mortgaged premises, and his grantee of a parcel of the land. This relation, in turn, results from the form of conveyance, which, being a warranty deed, or equivalent to a warranty, shows conclusively an intention between the two that the grantor is to assume the whole burden of the encumbrance as a charge upon *his own* parcel, while the grantee is to take and hold his portion entirely free. Secondly, the conveyance may be of a different character; by its special provisions it may expressly show, or by its general form it may impliedly indicate, that the grantee himself either assumes the whole mortgage debt and charges his parcel with the entire burden of the mortgage, or else takes and holds his parcel subject to and chargeable with its proportionate share of the encumbrance. Thirdly, although the deeds are warranties, so that the doctrine will otherwise apply, any particular grantee may by his subsequent omissions, or by his subsequent dealings with other grantees, disturb the order of the equities in his own favor, and create equities in behalf of other owners, and even render his own parcel primarily liable as between *all* the grantees. Finally, whenever the equities of any original grantee towards the other parties have been fixed, either by the form of his deed, or by his own omissions or dealings, then any subsequent purchaser or encumbrancer from such grantee takes the parcel subject to the same equities which originally attached to it; the same equities follow the parcel in its devolutions.¹ The equities among suc-

¹ An examination of the state reports discloses the fact that no single equitable doctrine more frequently arises before the American courts, or produces a greater number of decisions, than that which adjusts the rights of separate owners of land encumbered with the same mortgage, or adjusts the liens of different mortgages resting upon the same parcel or parcels of land. This doctrine in the form as presented in the text is almost exclusively American; very little aid in its application can be ob-

tained from English decisions. The cases which involve it are often exceedingly complicated in their facts, and present great apparent difficulties. However complicated such cases may be, their solution will always be comparatively easy and certain by keeping steadily in view and applying the few well-settled equitable principles formulated in the text. Any detailed examination of the decided cases involving these principles would occupy more space than my limits permit, since each case presents

cessive grantees, as determined by the general doctrine of the preceding paragraph, will therefore be disturbed in the following instances: 1. Whenever a grantee of any parcel either expressly assumes the payment of the mortgage, or his deed is of such a form that he takes the parcel conveyed to himself *subject to the mortgage as a part of the consideration*, then, as has already been shown, the parcel thus purchased becomes, in the hands of himself and of those holding under him, primarily chargeable with the mortgage debt as against the mortgagor-grantor, and consequently as against all subsequent grantees of other parcels from the mortgagor. By such an express or implied assumption, the doctrine of liability in the inverse order of alienation, and all of its consequences, are defeated with respect to the mortgagor and the subsequent grantees.¹ 2. In like manner, when the deeds to the successive grantees are not warranty or equivalent thereto, but simply purport to convey the mortgagor's right, title, and interest in the parcels, the intention is clear that the grantees respectively assume their portions of the burdens. Their several parcels are all liable ratably, and not in the inverse order.² 3. Where the conveyances were such that the rule of inverse order would otherwise have

its own peculiar facts, which are often numerous and complicated. I have preferred to formulate the principles, with such explanation as should render them simple and plain; they will, I trust, furnish the correct solution of every case.

¹ See *ante*, § 1205; 2 Lead. Cas. Eq., 4th Am. ed., 303; *Zabriskie v. Salter*, 80 N. Y. 555; *Erie Co. Sav. Bank v. Roop*, 80 N. Y. 591; *Hopkins v. Wolley*, 81 N. Y. 77; *Coles v. Appleby*, 22 Hun. 72; *Sanford v. Hill*, 46 Conn. 42; *Evansville Gas-light Co. v. State*, 73 Ind. 219; 38 Am. Rep. 129; *Kilborn v. Robbins*, 8 Allen, 466, 471; *Chapman v. Beardsley*, 31 Conn. 115; *Engle v. Haines*, 5 N. J. Eq. 186, 632; 43 Am. Dec. 624; *Caruthers v. Hall*, 10 Mich. 40; *Halsey v. Reed*, 9 Paige, 446; *Torrey v. Bank of Orleans*, 9 Paige, 649; *Warren v. Boynton*, 2 Barb. 13; *Hoy v. Bramhall*, 19 N. J.

Eq. 563; 97 Am. Dec. 687; *Pancoast v. Duvall*, 26 N. J. Eq. 445; *Mut. L. Ins. Co. v. Boughrum*, 24 N. J. Eq. 44; *Briscoe v. Power*, 47 Ill. 447. [See also *Browne v. Lynde*, 91 N. Y. 92; *Burger v. Greif*, 55 Md. 518; *Michigan State Ins. Co. v. Soule*, 51 Mich. 312; *Drury v. Holden*, 121 Ill. 130; *Tarbell v. Durant*, 61 Vt. 516.]

² As examples, where the mortgagor conveys by quitclaim deeds, or where the mortgaged premises are sold in parcels by execution on a judgment recovered for some debt other than the mortgage debt: 2 Lead. Cas. Eq., 4th Am. ed., 304; *Erlinger v. Boul*, 7 Ill. App. 40; *Aiken v. Gale*, 37 N. H. 501; *Carpenter v. Koons*, 20 Pa. St. 222; and see *Sanford v. Hill*, 46 Conn. 42; *Hoy v. Bramhall*, 19 N. J. Eq. 563; 97 Am. Dec. 687; [*Aderholt v. Henry*, 87 Ala. 415.]

applied, a grantee of a parcel prior in point of time may, by neglecting to record his deed, lose his precedence as against the subsequent grantees of other parcels, and those holding under them, whose deeds and mortgages are recorded without any notice of his title. The absence of the record in such case may, however, be supplied by other kind of notice, actual or constructive.¹ 4. Finally, any grantee otherwise entitled to precedence may, by his agreements or dealings with other grantees, render his own parcel primarily liable for the mortgage debt, as between himself and such other grantees; and the liability thus attached to the land would follow it in the hands of subsequent purchasers and encumbrancers.²

§ 1226. 4. **A Release by the Mortgagee of One or More Parcels.**—Although the equities between the subsequent owners of various parcels of the mortgaged premises, whether equal or unequal, do not prevent the mortgagee from enforcing the mortgage security, if necessary, against all these parcels, yet after the mortgagee has received notice of the subsequent conveyances, the equities affect him to such an extent that he cannot deal with the whole premises, or with any parcel thereof, or with the owner of any parcel, by release or agreement, so as to disturb the equities subsisting among the various owners, or to destroy their rights of precedence in the order of liability, or to defeat their rights of ratable contribution, or of complete or partial exoneration. No such obligation,

¹ If the mortgagor conveys one half to A, and afterwards the other half to B, and A's deed is not recorded, and B has no other notice of it, B has a right to assume that he himself is the first grantee, and that one half of the land remains in the mortgagor's hands primarily liable for the mortgage debt. By putting his own deed on record, B thus obtains a precedence over A, which avails on behalf of purchasers and mortgagees of the same parcel holding under him. B might, however, be charged with notice of A's deed, although unrecorded; and if A were in open, exclusive possession of his

parcel, this would generally operate as notice: 2 Lead. Cas. Eq., 4th Am. ed., 297; *Layman v. Willard*, 7 Ill. App. 183; *Brown v. Simons*, 44 N. H. 475; *Chase v. Woodbury*, 6 Cush. 143; *Chapman v. West*, 17 N. Y. 125; *New York Life Ins. Co. v. Cutler*, 3 Sand. Ch. 176; *La Farge F. Ins. Co. v. Bell*, 22 Barb. 54.

² See *Zabriskie v. Salter*, 80 N. Y. 555; *Erie Co. Sav. Bank v. Roop*, 80 N. Y. 591; *Hopkins v. Wolley*, 81 N. Y. 77; [also *Aderholt v. Henry*, 87 Ala. 416; *Moore v. Shurtleff*, 128 Ill. 370.]

however, rests upon the mortgagee, nor is he prevented from dealing with the mortgaged premises in any manner consistent with his general rights as a mortgagee, unless he has received notice of the conveyances to the subsequent owners whose interests could be affected by his dealings; but notice of their conveyances would be a notice of all the equities which arise therefrom. Since his mortgage is a prior lien, and creates an encumbrance alike upon all parts of the land subject to it, no subsequent change in the ownership of the mortgaged premises, of which he is ignorant, can in any degree control or limit his original rights and power conferred by the security. It is settled, therefore, that notice must be given to the mortgagee of any subsequent conveyance of a parcel of the mortgaged premises, so as to prevent him from affecting the equities of the grantee therein by his dealings with other portions of the same premises.¹ It is also settled, in this connection, that a record of the subsequent conveyance is not a constructive notice to the prior mortgagee, so as to prevent him from dealing in any manner with the mortgaged premises.² The effect of a partial release by the mortgagee who is charged with notice differs in the two cases where the equities of the various owners are equal and where they are unequal. In the first case, where the mortgaged premises have been conveyed to or are held by various owners, in such manner that their equities are equal, and all their parcels or

¹ *Hall v. Edwards*, 43 Mich. 473; *Hawhe v. Snyder*, 86 Ill. 197; *Meacham v. Steele*, 93 Ill. 135; *Warner v. De Witt Co. Bank*, 4 Ill. App. 305; *Kendall v. Niebuhr*, 58 How. Pr. 156; 13 Jones & S. 542; *Birnie v. Main*, 29 Ark. 591; *Cheesebrough v. Millard*, 1 Johns. Ch. 409; 7 Am. Dec. 494; *Guion v. Knapp*, 6 Paige, 35; 29 Am. Dec. 741; *Patty v. Pease*, 8 Paige, 277; 35 Am. Dec. 683; *Aiken v. Gale*, 37 N. H. 501, 511; *Iglehart v. Crane*, 42 Ill. 261; *Denster v. McCamus*, 14 Wis. 307, 311; *Straight v. Harris*, 14 Wis. 509, 513; *McLean v. Lafayette Bank*, 3 McLean, 587; and

cases in next following notes. [See also *Cogswell v. Stout*, 32 N. J. Eq. 240.]

² This is a special instance of the general rule that a record is notice only to subsequent purchasers and encumbrancers, and does not operate as a notice to prior parties: See *ante*, § 657, and cases cited in note; also *King v. McVickar*, 3 Sand. Ch. 192; *Wheelewright v. De Peyster*, 4 Edw. Ch. 232; *Lyman v. Lyman*, 32 Vt. 79; 76 Am. Dec. 151; *Shannon v. Marselis*, 1 N. J. Eq. 413; *Carter v. Neal*, 24 Ga. 346; 71 Am. Dec. 136; *Ritch v. Eichelberger*, 13 Fla. 169; [*Snyder v. Crawford*, 98 Pa. St. 414.]

shares are liable to a ratable contribution, if the mortgagee, having notice of such condition, releases one of the parcels or shares, he thereby discharges a part of the mortgage debt, equal to the ratable portion thereof chargeable upon the lot released, while the balance of the debt alone remains a burden upon the other parcels or shares of the premises. The release of one parcel or share would release all the other parcels from the same proportionate amount of their respective original liabilities which the value of the part released bears to the total value of the mortgaged premises; one owner being released, all the others are entitled to a *pro rata* abatement.¹ When the equities of the various owners are unequal, so that their respective parcels are liable in the inverse order of alienation, if the mortgagee, having notice of this situation, releases a parcel which is primarily liable, he thereby discharges or releases all those parcels which are subsequently liable, *in the order of their several liabilities*, from an amount of the mortgage debt *equal to the value of the parcel released*.² If the value of the parcel released equals

¹ Hall v. Edwards, 43 Mich. 473; Birnie v. Main, 29 Ark. 591; Stevens v. Cooper, 1 Johns. Ch. 425; 7 Am. Dec. 499; Stuyvesant v. Hall, 2 Barb. Ch. 151; Johnson v. Rice, 8 Me. 157; Parkinan v. Welch, 19 Pick. 231; Paxton v. Harrier, 11 Pa. St. 312; Taylor v. Short's Adm'r, 27 Iowa, 361; 1 Am. Rep. 280.

² Warner v. De Witt Co. Bank, 4 Ill. App. 305; Meacham v. Steele, 93 Ill. 135; Hawhe v. Snyder, 86 Ill. 197; Iglehart v. Crane, 42 Ill. 261; Briscoe v. Power, 47 Ill. 447; Cheesebrough v. Millard, 1 Johns. Ch. 409; 7 Am. Dec. 494; Guion v. Knapp, 6 Paige, 35; 29 Am. Dec. 741; Patty v. Pease, 8 Paige, 277; 35 Am. Dec. 683; Stuyvesant v. Hall, 2 Barb. Ch. 151; Stuyvesant v. Hone, 1 Sand. Ch. 419; Kendall v. Niebuhr, 58 How. Pr. 156; 13 Jones & S. 542; Mickel v. Rambo, 1 N. J. Eq. 501; Shannon v. Marselis, 1 N. J. Eq. 413; Blair v. Ward, 10 N. J. Eq. 119, 126; Reilly v. Mayer, 12 N. J. Eq. 55; Gaskill v. Sine, 13 N. J. Eq. 400; 78 Am. Dec. 105; Van-

orden v. Johnson, 14 N. J. Eq. 376; 82 Am. Dec. 254; Hoy v. Bramhall, 19 N. J. Eq. 563; 97 Am. Dec. 687; Mount v. Potts, 23 N. J. Eq. 188; Harrison v. Guerin, 27 N. J. Eq. 219; Paxton v. Harrier, 11 Pa. St. 312; Johnson v. Rice, 8 Me. 157, 161; Brown v. Simons, 44 N. H. 475; Town of Salem v. Edgerly, 33 N. H. 46, 50; Parkman v. Welch, 19 Pick. 231; George v. Wood, 9 Allen, 80; 85 Am. Dec. 741; James v. Brown, 11 Mich. 25; Deuster v. McCamus, 14 Wis. 307; Johnson v. Williams, 4 Minn. 260, 263. [See also Libby v. Tufts, 121 N. Y. 172; Martin's Appeal, 97 Pa. St. 85; Schrack v. Shriner, 100 Pa. St. 451; Burson v. Blackley, 67 Tex. 5; Boone v. Clark, 129 Ill. 466.] This rule may be illustrated by an example: A mortgagor has conveyed all the premises in five lots, successively, to A, B, C, D, and E; these lots are liable to be sold in the order, E, D, C, B, A. If the mortgagee should release A's lot, his right to enforce the mortgage in their order against the others would

the mortgage debt, then all the subsequent parcels are wholly relieved from liability; if the value is less than the mortgage debt, the subsequent parcels can, at most, be liable, in their order, only for the excess of the debt over such value. In any case, this effect of a release may be obviated by the consent of the other owners, and perhaps by special equities arising from the provisions of the mortgage, to which all of their parcels are subject.

§ 1227. **V. Foreclosure.**—The only equitable remedies of the mortgagee for enforcing the lien of the mortgage when it has become due are the two actions to both of which the name “foreclosure” is ordinarily given.¹ These two actions are the “strict foreclosure” and “foreclosure by judicial sale.” The strict foreclosure is a remedy based upon the original conception that the mortgage vests the mortgagee with the legal estate in the mortgaged premises, and its object is to carry out that conception by rendering the mortgagee’s legal estate and title absolute, and cutting off the equity of redemption held by the mortgagor and others claiming or holding under him. It is the common form of remedy in England. In this coun-

not be affected. If he should release E, and the value of his lot equaled the mortgage debt, the whole mortgage would be discharged. If the value of E’s lot was less than the mortgage debt, the mortgagee could then resort to D’s lot for the excess only, and if its proceeds equaled that excess, all the remaining lots would be free; if there was a balance still due after the sale of D’s lot, C’s could be sold *for that balance*, and so on. If the mortgagee should first release C’s lot, the situation would be more complicated. The mortgagee could still enforce the whole mortgage against E’s lot first, and then for any excess against D’s. If a balance was still due after the sale of these two lots, B’s would not be liable for all of that balance. The value of C’s lot which was released must be added to the proceeds of E’s and D’s, and this sum subtracted from the gross mortgage debt, and if any excess remained, B’s lot, and finally A’s, would be liable only for that ex-

cess; if there was no excess, B’s and A’s lots would be free. It should be observed that a release does not always thus operate as a discharge; it is not a technical discharge; it is a discharge only where, on principles of equity and justice, it ought to produce that effect: See *Kendall v. Woodruff*, 87 N. Y. 1, 7, per *Folger, C. J.*; *Patty v. Pease*, 8 Paige, 277; 35 Am. Dec. 683. [See also *Libby v. Tufts*, 121 N. Y. 172.] The statute of limitations as applied to the right of redemption is discussed in a very exhaustive manner in 2 *Jones on Mortgages*, secs. 1144–1173; and in 2 *Lead. Cas. Eq.*, 4th Am. ed., 1969–1977, 2006, notes to *Thornbrough v. Baker*.

¹ The subject of foreclosure is so extensive, and involves so many matters of detail, and is so much regulated by statute in many states, that I shall not attempt here to enter upon its discussion. The reader is referred to treatises upon mortgages, and especially to Mr. Jones’s work (vol. 2, c. 25–38).

try it is confined as an ordinary remedy to states which have adopted the first or legal theory of mortgages as heretofore described; and even in many of the states belonging to this class the foreclosure by judicial sale seems to be the form of remedy most frequently used. The strict foreclosure is inconsistent with the theory which regards the mortgage as creating only an equitable lien, and as conveying no legal estate. In some of the states which have adopted this system, it is expressly prohibited by statute; in others, it has become practically obsolete, or is resorted to only under special circumstances, where the foreclosure by sale would be insufficient or impracticable.¹ The strict foreclosure assumes that the mortgagee is already in possession by virtue of his legal title. The decree ascertains and fixes the amount of the debt due and payable, after an accounting, if necessary; prescribes a period — say six months — within which redemption must be made by payment of this sum; and declares that upon default of payment within the specified period, the legal estate and title of the plaintiff shall be absolute, and the equity of redemption of the mortgagor and of all other persons claiming under him, subsequent to the mortgage, who were made defendants in the suit, shall be forever barred, cut off, and foreclosed. By operation of this decree, the mortgagee's legal title to the land, acquired by the mortgage as a conveyance, is finally confirmed and established, free from all equities of redemption.

§ 1228. **Foreclosure by Judicial Sale.** — This form of remedy, which is by far the most common in our own

¹ For example, where a mortgage is in the form of an absolute deed of conveyance, and the grantee-mortgagee is in possession, a strict foreclosure may be appropriate for the purpose of making his title absolute; although even in this case the foreclosure by sale is frequently adopted. The strict foreclosure is also proper in case of a land contract, in order to cut off the vendee's equitable right. Also, where the land had been actually sold under

a decree rendered in a suit for a foreclosure by sale, and some subsequent encumbrancer or other person interested in the premises was not made a party defendant to that suit, so that his rights of redemption are not cut off by the sale, the purchaser may maintain an action in the nature of a strict foreclosure against such person, for the purpose of cutting off his rights, unless he comes in and redeems within a prescribed time.

country, is based upon the notion that the mortgage simply creates an equitable lien upon the premises, as a security for the mortgage debt, and its object is to enforce that lien by a sale of the premises, in order that the proceeds may be applied in satisfaction of the debt. The decree ascertains the amount due, and orders that the mortgaged premises be sold at public auction by judicial sale, and the proceeds be applied in payment of the amount thus ascertained, after satisfying the expenses of the sale itself. In many of the states, preparatory to the decree, the court orders an inquiry to be made into the present situation and ownership of the premises, so that the equities of the owners may be provided for, and as far as possible secured by the terms of the decree. If the land has been conveyed in successive parcels to different owners, the decree may order that the premises be sold in such parcels in the inverse order of their alienation; even when there are no such equities among the different owners of the premises, the court may order the premises sold in parcels, and not in one gross amount, if that method will best protect the interests of the owner as well as the security of the plaintiff. When the sale is consummated, a deed is given by the sheriff, master, or other officer who conducts the sale to the purchaser, who may be the mortgagee himself, or other holder of the mortgage; and such purchaser is therefore entitled to possession, and will be put into possession, if necessary, by process of the court. The effect of this deed, when given in pursuance of a valid decree and sale, is to convey to the purchaser whatever title the mortgagor had at the time of executing the mortgage, and whatever title he may subsequently have acquired down to the time of the foreclosure. But the sale does not affect the right of any one holding by or claiming under a title paramount to that of the mortgagor. In the states where no statutory right of redemption after a sale is

given, the sale under a valid decree immediately cuts off, bars, and forecloses the rights of the mortgagor, and of all subsequent grantees, owners, encumbrancers, and other persons interested, who were made parties defendant, and of all grantees, owners, and encumbrancers subsequent to the filing of a notice of *lis pendens*, although not made defendants. Where the proceeds of the premises sold, after paying the expenses, are not sufficient to fully satisfy the amount of the debt as fixed by the decree, the deficiency, of course, remains a personal debt owing and payable by the mortgagor and by his grantee who has assumed payment of the mortgage debt, and has thus made himself personally liable therefor. When such deficiency is officially certified by the report of the officer conducting the sale, upon confirmation of the report the plaintiff is allowed, generally by statutory authority, to enter and docket a personal judgment for the amount of the deficiency, without further suit, against the mortgagor and other persons who are personally liable for the mortgage debt, and who were made defendants in the suit. This judgment, like every other legal money judgment, is enforceable by execution against the general property of the judgment debtors. On the other hand, after defraying the expense of the sale and satisfying the decree, there may be a surplus of the proceeds remaining, as shown by the report of the officer conducting the sale. If the mortgagor remains sole owner of the premises, and there were no other persons interested therein, nor encumbrances thereon, this surplus would clearly belong to him. If there were subsequent encumbrances, or subsequent grantees, or owners, or persons interested in the premises, they would or *might* be entitled to the surplus in the order of their respective liens or interests. Upon the report, therefore, showing such a surplus remaining, the court directs a reference to ascertain the situation of the premises, the persons interested therein or having

liens thereon, the order of their claims or liens, and to determine who are entitled to the surplus, and the several shares therein. Upon the confirmation of the referee's report, the court will make an order directing the surplus to be paid or distributed in accordance with its conclusions.

CHAPTER SIXTH.

MORTGAGES OF PERSONAL PROPERTY AND
PLEDGES.

ANALYSIS.

- § 1229. General nature of, at law.
- § 1230. Jurisdiction and remedies in equity.
- § 1231. Pledges: Equitable jurisdiction and remedies.
- § 1232. Chattel mortgages in California.

§ 1229. **General Nature of, at Law.** — In most of the states, as well as in England, a personal or chattel mortgage is, at law, a conditional sale of the things mortgaged, passing the legal title to the mortgagee, which becomes absolute on the mortgagor's failure to perform the condition. As between the parties, a delivery of the possession to the mortgagee is not essential, although the absence of such delivery may raise a presumption that the transaction was a fraud upon the rights of the mortgagor's creditors, and may thus endanger the validity of the mortgagee's title as against their claims. A pledge, on the other hand, is a delivery of the thing into the actual or constructive possession of the creditor, to be retained by him until the debt is paid. The pledgee acquires only a special property, which is not enlarged by the mere fact that the pledgor fails to pay the debt at the time specified; whereas by such a failure the legal estate of the mortgagee becomes *ipso facto* complete and absolute.¹ Upon a breach of the condition contained in

¹ As to the nature of a chattel mortgage, and especially its differences from a pledge, see *Jones v. Smith*, 2 Ves. 372, 378; *Ryall v. Rolle*, 1 Atk. 165, 166, 167; *Cortelyou v. Lansing*, 2 Caines Cas. 200, 210, 213; *Barrow v. Paxton*, 5 Johns. 258; 4 Am. Dec. 354; *Strong v. Tompkins*, 8 Johns. 98; *McLean v. Walker*, 10 Johns. 471; *Wilson v. Little*, 2 N. Y. 443; 51 Am.

Dec. 307; *Haskins v. Kelly*, 1 Rob. (N. Y.) 160; *Parshall v. Eggart*, 52 Barb. 367; *Winchester v. Ball*, 54 Me. 558; *Walcott v. Keith*, 22 N. H. 196; *Whittle v. Skinner*, 23 Vt. 531; *Wright v. Ross*, 36 Cal. 414; *Heyland v. Badger*, 35 Cal. 404; *Dewey v. Bowman*, 8 Cal. 145; *Waldie v. Doll*, 29 Cal. 555; *Goldstein v. Hort*, 30 Cal. 372; *Gay v. Moss*, 34 Cal. 125;

the mortgage, the legal title vests so completely in the mortgagee that all the rights incident to ownership and possession in law at once arise.¹ By taking possession of the property and selling it at public sale upon due notice, he will then extinguish every right and interest at law of the mortgagor.²

§ 1230. **Jurisdiction and Remedies in Equity.**—While the legal title of the mortgagee is thus made absolute by a failure to perform the condition, the doctrine is well settled that the mortgagor retains an equity of redemption notwithstanding his default, which he may enforce by an equitable suit to redeem, even though the mortgagee has taken possession of the chattels, at any reasonable time before his right has been cut off by a valid public sale of the property; and even after such sale, if there has been any element of inequitable conduct, or bad faith or fraud on the mortgagee's part, the mortgagor may maintain an equitable action for an accounting against the mortgagee, and hold him responsible for the real value of the property, or what might have been obtained for it by a fair and reasonable sale.³ On the

Ponce v. McElvy, 47 Cal. 154; Meyerstein v. Barber, L. R. 2 Com. P. 38, 51; L. R. 4 H. L. 317; [Merrill v. Ressler, 37 Minn. 82; 5 Am. St. Rep. 822; Waterman v. Mackenzie, 138 U. S. 252.]

¹ Burdick v. McVanner, 2 Denio, 170; Case v. Boughton, 11 Wend. 106, 109; Langdon v. Buel, 9 Wend. 80; Patchin v. Pierce, 12 Wend. 61; Fuller v. Acker, 1 Hill, 473. The chattels may be taken upon execution against him: Ferguson v. Lee, 9 Wend. 253; Porter v. Parmly, 43 How. Pr. 445.

² Hart v. Ten Eyck, 2 Johns. Ch. 62, 100, 101; Cortelyou v. Lansing, 2 Caines Cas. 200, 210, 213; Dane v. Mallory, 16 Barb. 46; Parker v. Brancker, 22 Pick. 40, 46; Doane v. Russell, 3 Gray, 382, 384; Freeman v. Freeman, 17 N. J. Eq. 44; Bryant v. Carson River L. Co., 3 Nev. 313; 93 Am. Dec. 403. See Davenport v. McChesney, 86 N. Y. 242; [National Bank v. Holman, 31 S. C. 161.]

³ Kemp v. Westbrook, 1 Ves. Sr. 278; Hart v. Ten Eyck, 2 Johns. Ch. 62, 100, 101; Stoddard v. Denison, 7 Abb. Pr., N. S., 309; Flanders v. Chamberlain, 24 Mich. 305; Heyland v. Badger, 35 Cal. 404; Blodgett v. Blodgett, 48 Vt. 32; Landers v. George, 49 Ind. 309; Halstead v. Swartz, 1 Thomp. & C. 559; Pulver v. Richardson, 3 Thomp. & C. 436; Porter v. Parmly, 43 How. Pr. 445. See Davenport v. McChesney, 86 N. Y. 242; [Boyd v. Beandin, 54 Wis. 193.] After the mortgagee has taken possession upon a default, a tender of the amount due by the mortgagor will not revest the title in himself; his only remedy is by an equity suit to redeem: Blodgett v. Blodgett; Halstead v. Swartz. When the chattels are sold at public sale on default, and purchased by the mortgagee himself, the mortgagor's equitable remedy of redemption still exists: Pulver v. Richardson. Cases of accounting and personal judgment against the mortgagee when his sale or conver-

other hand, although a foreclosure in equity is not necessary, yet equity has undoubted jurisdiction to entertain a suit on behalf of the mortgagee, and to decree a foreclosure by a judicial sale of the mortgaged chattels, as in the case of a mortgage of land.¹

§ 1231. *Pledges.*—A like equitable jurisdiction exists in cases of pledges. As a general rule, the pledgor may undoubtedly obtain complete relief at law by a tender and by an action to recover the chattel or its value; but under special circumstances, as where an accounting or a discovery is needed, or where the pledge has been assigned, the pledgor may certainly maintain an equitable suit for a redemption.² The modern decisions have generally settled the rule that, in ordinary pledges of chattels, the pledgee may enforce his security and cut off the pledgor's right of redemption without any action, by means of a public sale of the pledged article, after a demand of payment made upon and notice of the sale given to the pledgor. The equitable jurisdiction, however, still exists, and the pledgee may enforce his security by a suit in equity for a foreclosure and judicial sale; and this mode by suit in equity must be resorted to when the pledged articles are negotiable instruments, or other things in action having no market price or value, and

sion of the chattels has rendered their redemption impossible: *Blodgett v. Blodgett*; *Flanders v. Chamberlain*. Where the mortgage expressly provides that the mortgagee may take possession and sell the chattels whenever he may deem himself insecure, a court of equity will not interfere on behalf of the mortgagor to restrain the mortgagee from exercising such option: *Cline v. Libby*, 46 Wis. 123; 32 Am. Rep. 700.

¹ Under some circumstances, this remedy is not only preferable, but the only practicable one; as, for example, in mortgages of things in action, of railroad rolling stock, etc.: *Dyson v. Morris*, 1 Hare, 413, 422, per Wigram, V. C.; *Kemp v. Westbrook*, 1 Ves. Sr. 278; *Hart v. Ten Eyck*, 2 Johns. Ch. 62, 100; *Lausing v. Goelet*, 9

Cow. 372, per Jones, C.; *Charter v. Stevens*, 3 Denio, 33; 45 Am. Dec. 444; *Huntington v. Mather*, 2 Barb. 538; *Mattison v. Baucus*, 1 N. Y. 295; *Briggs v. Oliver*, 68 N. Y. 336; *Porter v. Parmly*, 43 How. Pr. 445; *Stoddard v. Denison*, 7 Abb. Pr., N. S., 309; *Gregory v. Cable*, 26 N. J. Eq. 178; *Marx v. Davis*, 56 Miss. 745; 55 Miss. 376. See *Putnam v. Reynolds*, 44 Mich. 113; *Wylder v. Crane*, 53 Ill. 490. [See also *Brown v. Russell*, 105 Ind. 46; *Clark v. Baker*, 6 Mont. 153.]

² *Jones v. Smith*, 2 Ves. 372; *Bartlett v. Johnson*, 9 Allen, 530; *Merrill v. Houghton*, 51 N. H. 61; *White Mts. R. R. v. Bay State Iron Co.*, 50 N. H. 57; *Hasbrouck v. Vandervoort*, 4 Sand. 74; *Conyngham's Appeal*, 57 Pa. St. 474; and see *Brown v. Runals*, 14 Wis. 693.

also, whenever, in case of any kind of article pledged, it is impossible to make demand of or give notice to the pledgor as necessary preliminaries to a foreclosure by sale.¹

§ 1232. **Chattel Mortgage in California.**—By the Civil Code of California, and of the other states and territories which have adopted the same type of legislation, the common-law view of the chattel mortgage as a conditional sale has been wholly abandoned; the mortgage itself has been assimilated to the mortgage of lands as creating only a lien, the legal ownership and all its incidents, including the right of possession, being left in the mortgagor until the lien is enforced and his interest is extinguished either by an equitable suit for foreclosure or by a public sale. The personal mortgage, however, is only permitted to be given upon certain kinds and classes of chattels specified in the statute.²

¹ In some of the states a foreclosure by suit in equity seems to be the ordinary remedy in all cases: *Ex parte Mountfort*, 14 Ves. 606; *Carter v. Wake*, L. R. 4 Ch. Div. 605; *Boynton v. Payrow*, 67 Me. 587; *Freeman v. Freeman*, 17 N. J. Eq. 44; *Dupuy v. Gibson*, 36 Ill. 197; *Donohoe v. Gamble*, 38 Cal. 340; 99 Am. Dec. 399; *Strong v. Nat. Mech. Bkg. Ass'n*, 45 N. Y. 718; *Booth v. Eighmie*, 60 N. Y. 238; 19 Am. Rep. 171; *Stearns v. Marsh*, 4 Denio, 227; 47 Am. Dec. 248; *Diller v. Brubaker*, 52 Pa. St. 498, 502; 91 Am. Dec. 177; *Worthington v. Tormey*, 34 Md. 182; [*Wilson v. Johnson*, 74 Wis. 337.] If personal notice cannot be given to the pledgor, or if the articles are things in action, —except government bonds, and stocks, etc., which have a regular market value, and can therefore be sold for their real value at an auction, —the pledgee must resort to equity: *Stearns v. Marsh*, *supra*; *Wheeler v. Newbould*, 16 N. Y. 392 (negotiable paper); *Gay v. Moss*, 34 Cal. 125; *Donohoe v. Gamble*, 38 Cal. 340; 99 Am. Dec. 399; Cal. Civ. Code, secs. 3006, 3011.

² The same definition and the same description of its incidents and of the

rights of the two parties apply alike to the mortgage of chattels and to that of land. The form of the chattel mortgage given in the code excludes all notion of a sale, and plainly indicates nothing but a lien. The following is the form: "This mortgage, made etc., by etc., witnesseth that the mortgagor mortgages to the mortgagee (description of the property) as security for the payment to him of (statement of the amount, time, and terms)." Possession by the mortgagee is not required; the notion that possession by the mortgagor raises any presumption of an intent to defraud his creditors or subsequent purchaser is wholly rejected; in place thereof, the code provides that the mortgage shall be void as against such creditors and purchasers, unless it is accompanied by an affidavit of all the parties that it is made in good faith and without intent to defraud them, and unless it is properly acknowledged and recorded. The code specifies the kinds of chattels upon which a mortgage may be given, and a mortgage upon other species of personal property would be nugatory: See Cal. Civ. Code, secs. 2920, 2923, 2927, 2931, 2936, 2956, 2957, 2967–2970, 3000–3002.

CHAPTER SEVENTH.

EQUITABLE LIENS.

SECTION I.

THEIR GENERAL NATURE.

ANALYSIS.

§ 1233. What are included in this term; what is an equitable lien.

§ 1234. Origin and *rationale* of the doctrine.

§ 1233. **What are Included in This Term — What is an Equitable Lien.** — Analogous to mortgages considered from the purely equitable point of view are the important class of interests embraced under the denomination of “equitable liens”; and I include within this general term those interests which are not regarded by the American jurisprudence as true mortgages, but which are commonly called by English writers and judges “equitable mortgages.”¹ An equitable lien is not an estate or property in the thing itself, nor a right to recover the thing, — that is, a right which may be the basis of a possessory action; it is neither a *jus ad rem* nor a *jus in re*.² It is simply a right of a special nature *over* the thing, which

¹ The most important species of “equitable mortgages,” according to the English theory, are, in all the states of this country, *legal* mortgages. In England certain mortgages are called “equitable,” because no legal estate is transferred by them to the mortgagee; for example, every mortgage of the equity of redemption, — that is, every second or other subsequent mortgage is “equitable,” since the legal estate has already been conveyed by the first mortgage. In this country no such distinction is recognized. In the states adopting the legal system, — the first class hereto-

fore described, — *every* successive mortgage conveys a legal estate to the mortgagee; while in the states of the second class every mortgage simply creates a lien. In England the deposit of title deeds as security is called an “equitable mortgage.” It is better to include all cases of such liens which are not proper mortgages within the general class of “equitable liens”; this division is both simple and natural.

² See *Peck v. Jenness*, 7 How. 612, 620, per Grier, J.; [*Hovey v. Elliott*, 118 N. Y. 124, 136.]

constitutes a charge or encumbrance upon the thing, so that the very thing itself may be proceeded against in an equitable action, and either sold or sequestered under a judicial decree, and its proceeds in the one case, or its rents and profits in the other, applied upon the demand of the creditor in whose favor the lien exists.¹ It is the very essence of this condition that while the lien continues the possession of the thing remains with the debtor or the person who holds the proprietary interest subject to the encumbrance.² The equitable lien differs essentially from the common-law lien, which is simply a right to retain possession of the chattel until some debt or demand due to the person thus retaining is satisfied; and possession is such an inseparable element, that if it be voluntarily surrendered by the creditor, the lien is at once extinguished.³

§ 1234. *Origin and Rationale of the Doctrine.* — The doctrine of equitable liens is one of great importance and of wide application in administering the rights and remedies peculiar to equity jurisprudence. There is perhaps no doctrine which more strikingly shows the difference between the legal and the equitable conceptions of the juridical results which flow from the dealings of men with each other, from their express or implied undertakings.

¹ The equitable lien is strictly analogous to, and is undoubtedly derived from, the *hypotheca* of the Roman law. *Hypotheca* was the right given to a creditor over a thing belonging to another, in order to secure the payment of a debt, while the property and possession remained in the debtor. It was thus distinguished from *pignus*, in which the possession was delivered to the creditor, and he thus acquired a special property. *Hypotheca* was generally created by agreement, express or implied, between the parties; but in some cases it was created by operation of law, and then called *hypotheca tacita*, as over the property of a tutor in favor of his ward, and in favor of a wife over her dowry in the hands of the husband: See Sanders's Institutes of Justinian, 205, 206.

² *Brace v. Duchess of Marlborough*, 2 P. Wms. 491; *Ex parte Knott*, 11 Ves. 609, 617.

³ *Heywood v. Waring*, 4 Camp. 291, 295, per Lord Ellenborough; *Hammonds v. Barclay*, 2 East, 227, 235; *Ex parte Heywood*, 2 Rose, 355, 357. In some instances of the common-law lien the creditor acquires no right but that of simple detention, — e. g., the lien of an attorney on the papers of his client. In most, however, he may have a remedy against the thing itself, and in some cases equity will aid the creditor by its more efficient remedy of foreclosure by judicial sale: See *Oxenham v. Esdaile*, 2 Younge & J. 493; *Gladstone v. Birley*, 2 Mer. 401, 404.

A brief explanation of the foundation and reasons upon which this branch of the equity jurisprudence rests is essential to a full understanding of the subject. It is sometimes, although I think unnecessarily and even incorrectly, spoken of as a species of implied trusts.¹ If any reference to the theory of trust is made, it is more accurate to describe these liens as *analogous to trusts*; for while the two have some similar features, they are unlike in their essential elements. The common-law remedies upon all contracts except those which transfer a legal estate or property, such as conveyances of land and sales or bailments of chattels ("real" contracts, *contractus reales*), are always mere recoveries of money; the judgments are wholly pecuniary and personal, enforced in ancient times against the person of the judgment debtor by imprisonment, and in modern times against his property by means of an execution. This species of remedy is seldom granted by equity, and is opposed to its general theory. The remedies of equity are, as a class, specific. Although it is commonly said of them that they are not *in rem*, because they do not operate by the inherent force of the decree in an equitable suit to change or to transfer the title or estate in controversy, yet these remedies are, as a general rule, directed against some specific thing; they give or enforce a right to or over some particular thing, — a tract of land, personal property, or a fund, — rather than a right to recover a sum of money generally out of the defendant's assets. Remedies in equity, as well as at law, require some primary right or

¹ Incorrectly, in my opinion, because the very essence of every real trust, express, resulting, or constructive, is the existence of two *estates* in the same thing, — a legal estate vested in the trustee, and an equitable estate held by the beneficiary. In an equitable lien there is a legal estate with possession in one person, and a special right *over* the thing held by another; but here the resemblance, which at most is external, ends. This special

right is not an *estate* of any kind; it does not entitle the holder to a conveyance of the thing nor to its use; it is merely a right to secure the performance of some outstanding obligation, by means of a proceeding directed against the thing which is subject to the lien. To call this a trust, and the owner of the thing a trustee for the lien-holder, is a misapplication of terms which have a very distinct and certain meaning.

interest of the plaintiff which shall be maintained, enforced, or redressed thereby. When equity has jurisdiction to enforce rights and obligations growing out of an executory contract, this equitable theory of remedies cannot be carried out, unless the notion is admitted that the contract creates some right or interest in or over specific property, which the decree of the court can lay hold of, and by means of which the equitable relief can be made efficient. The doctrine of "equitable liens" supplies this necessary element; and it was introduced for the sole purpose of furnishing a ground for the specific remedies which equity confers, operating upon particular identified property, instead of the general pecuniary recoveries granted by courts of law. It follows, therefore, that in a large class of executory contracts, express and implied, which the law regards as creating no property right, nor interest analogous to property, but only a mere personal right and obligation, equity recognizes, *in addition to the personal obligation*, a peculiar right over the thing concerning which the contract deals, which it calls a "lien," and which, though not property, is analogous to property,¹ and by means of which the plaintiff is enabled to follow the identical thing, and to enforce the defendant's obligation by a remedy which operates directly upon that thing. The theory of equitable liens has its ultimate foundation, therefore, in contracts, express or implied, which either deal with or in some manner relate to specific property, such as a tract of land, particular chattels or securities, a certain fund, and the like. It is necessary to divest one's self of the purely legal notion concerning the effect of such contracts, and to recognize the fact that equity regards them as creating a charge upon or hypothecation of the specific thing, by means of which the personal obligation arising from the agreement may be more effectively enforced than by a mere pecuniary recovery at law.

¹ [Quoted by Bradley, J., in *Hovey v. Elliott*, 118 N. Y. 124, 139.]

SECTION II.

ARISING FROM EXPRESS CONTRACT.

ANALYSIS.

- § 1235. The general doctrine; requisites of the contract.
 § 1236. On property to be acquired in future.
 § 1237. The form and nature of the agreement; illustrations of particular agreements; agreements to give a mortgage; defective mortgages; assignments; bills of exchange, etc.

§ 1235. **The General Doctrine — Requisites of the Contract.**—The doctrine may be stated in its most general form, that every express executory agreement in writing, whereby the contracting party sufficiently indicates an intention to make some particular property, real or personal, or fund, therein described or identified, a security for a debt or other obligation, or whereby the party promises to convey or assign or transfer the property as security, creates an equitable lien upon the property so indicated, which is enforceable against the property in the hands not only of the original contractor, but of his heirs, administrators, executors, voluntary assignees, and purchasers or encumbrancers with notice. Under like circumstances, a merely verbal agreement may create a similar lien upon personal property.¹ The ultimate

¹ Ex parte Wills, 1 Ves. 162; 2 Cox, 233; Brown v. Heathcote, 1 Atk. 160, 162; Russel v. Russel, 1 Brown Ch. 269; Card v. Jaffray, 2 Schoales & L. 374, 379; Berrington v. Evans, 3 Younge & C. 384, 392; Collyer v. Fallon, Turn. & R. 459, 475, 476; Countess of Mornington v. Keane, 2 De Gex & J. 292, 313; Gibson v. May, 4 De Gex, M. & G. 512; Meyers v. United etc. Co., 7 De Gex, M. & G. 112; Twynam v. Hudson, 4 De Gex, F. & J. 462; Hastie v. Hastie, L. R. 2 Ch. Div. 304; Husted v. Ingraham, 75 N. Y. 251, 257; Hale v. Omaha Nat. Bank, 49 N. Y. 626; 64 N. Y. 550; Payne v. Wilson, 74 N. Y. 348; Chase

v. Peck, 21 N. Y. 581; Stevens v. Watson, 4 Abb. App. 302; Lanning v. Tompkins, 45 Barb. 308, 316; Williams v. Ingersoll, 23 Hun, 284; Burdick v. Jackson, 7 Hun, 488; Arnold v. Morris, 7 Daly, 498; In re Howe, 1 Paige, 125; 19 Am. Dec. 395; Mitchell v. Winslow, 2 Story, 630; Bank of Washington v. Nock, 9 Wall. 373; Skiddy v. Atlantic etc. R. R., 3 Hughes, 320; Pinch v. Anthony, 8 Allen, 536; Gilson v. Gilson, 2 Allen, 115; Bank of Muskingum v. Carpenter's Adm'rs, 7 Ohio, 21; 28 Am. Dec. 616; Cotterell v. Long, 20 Ohio, 464; Monticello Hydraulic Co. v. Longhry, 72 Ind. 562; Boorman v. Wisconsin etc.

grounds and motives of this doctrine are explained in the preceding section; but the doctrine itself is clearly an application of the maxim, equity regards as done that which ought to be done.¹ In order, however, that a lien may arise in pursuance of this doctrine, the agreement must deal with some particular property, either by identifying it, or by so describing it that it can be identified, and must indicate with sufficient clearness an intent that the property so described, or rendered capable of identification, is to be held, given, or transferred as security for the obligation.²

§ 1236. **On Property to be Acquired in Future.**—The doctrine is carried still further, and applied to property not yet in being at the time when the contract is made.

Co., 36 Wis. 207; *Delaire v. Keenan*, 3 Desaus. Eq. 74; 4 Am. Dec. 604; *Kirksey v. Means*, 42 Ala. 426; *Morrow v. Turney's Adm'r*, 35 Ala. 131; *Petrie v. Wright*, 6 Smedes & M. 647; *Adams v. Johnson*, 41 Miss. 258; *Daggett v. Rankin*, 31 Cal. 321; *Love v. Sierra Nevada Co.*, 32 Cal. 639, 652; 91 Am. Dec. 602; and other cases in the subsequent notes. [See also *Hauselt v. Harrison*, 105 U. S. 401; *Gest v. Packwood*, 39 Fed. Rep. 525; *Hovey v. Elliott*, 118 N. Y. 124 (lien on personal property); *Smith v. Smith*, 125 N. Y. 224; *Bank v. Johnson*, 47 Ohio St. 306; *Fresno C. & I. Co. v. Rowell*, 80 Cal. 114; 13 Am. St. Rep. 112 (lien of irrigation company for water furnished under contract); *Fresno C. & I. Co. v. Dunbar*, 80 Cal. 530; *Cole v. Smith*, 24 W. Va. 287 (lien expressly reserved of vendor of real and personal property for a gross sum for both). That the express agreement creating a lien on land must be in writing, see *Kelly v. Kelly*, 54 Mich. 30.] An equitable lien passes to the assignee of the debt, although not named in the instrument of assignment: *Payne v. Wilson*, 74 N. Y. 348; and such a specific lien on land is preferred to a subsequent legal lien by judgment: *Stevens v. Watson*, 4 Abb. App. 302.

¹ *Daggett v. Rankin*, 31 Cal. 321, 326, per Currey, C. J.; see the admirable statement of this truth in the passage quoted *ante*, in note under § 373.

² *Countess of Mornington v. Keane*, 2 De Gex & J. 292; *Fremoult v. Dedire*, 1 P. Wms. 429; *Williams v. Lucas*, 2 Cox, 160; *Ravenshaw v. Hollier*, 7 Sim. 3; *Wellesley v. Wellesley*, 4 Mylne & C. 561; *Adams v. Johnson*, 41 Miss. 258; *Pinch v. Anthony*, 8 Allen, 536; [see also *Lee v. Cole*, 17 Or. 559.] Thus an agreement to give security by mortgage *on lands*, when called upon to do so, does not constitute an equitable lien upon any land which the covenantor owned: *Williams v. Lucas*, 2 Cox, 160; nor an agreement to give a mortgage *on sufficient lands*: *Adams v. Johnson*, 41 Miss. 258; nor a general covenant to give security on or before a specified day *on lands* or on the covenantor's lands: *Countess of Mornington v. Keane*, 2 De Gex & J. 292; and see *ante*, § 583; but a covenant that all the land which the covenantor shall have on a certain day shall be charged or be security will create a lien, since the description enables the particular land to be identified: *Countess of Mornington v. Keane*, 2 De Gex & J. 292, 313; and see *Roundell v. Breary*, 2 Vern. 482; *Pinch v. Anthony*, 8 Allen, 536, 539; as further example of no lien, see *Person v. Obersteuffer*, 59 How. Pr. 339; *Chamberlin v. Peltz*, 1 Mo. App. 183; *Bank of Washington v. Nock*, 9 Wall. 373; *Goemmel v. Arnett*, 100 Ill. 34; *Cook v. Black*, 54 Iowa, 693. [See also *Knott v. Mfg. Co.*, 30 W. Va. 790.]

It is well settled that an agreement to charge, or to assign, or to give security upon, or to affect property not yet in existence, or in the ownership of the party making the contract, or property to be acquired by him in the future, although, with the exception of one particular species of things, it creates no legal estate or interest in the things when they afterwards come into existence or are acquired by the promisor,¹ does constitute an equitable lien upon the property so existing or acquired at a subsequent time, which is enforced in the same manner and against the same parties as a lien upon specific things existing and owned by the contracting party at the date of the contract.²

§ 1237. **Form and Nature of the Agreement**—**Illustrations of Particular Agreements.**—The form or particular nature of the agreement which shall create a lien is not very material, for equity looks at the final intent and purpose rather than at the form; and if the intent appear to give, or to charge, or to pledge property, real or

¹ *Otis v. Sill*, 8 Barb. 102, and cases cited; [*France v. Thomas*, 86 Mo. 80.] The excepted case is that of an agreement to sell chattels not yet in existence, which are of the kind said to have a "potential existence," the most familiar example of which is an expected crop: *Andrew v. Newcomb*, 32 N. Y. 417, 420; *Grantham v. Hawley*, Hob. 132; *Trull v. Eastman*, 3 Met. 121; 37 Am. Dec. 126; *Jones v. Richardson*, 10 Met. 481, 488; *Smith v. Atkins*, 18 Vt. 461; *Van Hoozer v. Cory*, 34 Barb. 9, 12; *Conderman v. Smith*, 41 Barb. 404; *Arques v. Wasson*, 51 Cal. 620; 21 Am. Rep. 718; *Phila. etc. R. R. v. Woelpper*, 64 Pa. St. 366, 371; 3 Am. Rep. 596; *Forman v. Proctor*, 9 B. Mon. 124.

² *Holroyd v. Marshall*, 10 H. L. Cas. 191; *Wellesley v. Wellesley*, 4 Mylne & C. 561, 579, per Lord Cottenham; *Metcalfe v. Archbishop of York*, 6 Sim. 224; 1 Mylne & C. 547, 556; *Lyde v. Myynn*, 4 Sim. 505; 1 Mylne & K. 683; *Lewis v. Madocks*, 17 Ves. 48; *Tooke v. Hastings*, 2 Vern. 97; *Curtis v. Auber*, 1 Jacob & W. 526; *Douglas v. Russell*, 4 Sim. 524; 1 Mylne

& K. 488; *Alexander v. Duke of Wellington*, 2 Russ. & M. 35; cited 1 Mylne & C. 556; *Williams v. Winsor*, 12 R. I. 9; *Clay v. East Tenn. etc. R. R.*, 6 Heisk. 421; *McClure v. McDearmon*, 26 Ark. 66; [*Chester v. Jumel*, 125 N. Y. 237, 251, 252; *Powell v. Jones*, 72 Ala. 392; *Taylor v. Huck*, 65 Tex. 238.] This subject is more fully treated in the subsequent chapter upon assignments: See *post*, §§ 1283, 1288. The most common examples of such contracts in this country are chattel mortgages, and leases containing a clause in the nature of a chattel mortgage, which purport to embrace future-acquired property of the mortgagor or lessee. These instruments, although creating no legal interest in the property thus described, constitute an equitable lien between the immediate parties, and also against subsequent volunteers and persons affected with notice, except so far as local statutes concerning the filing or recording of chattel mortgages may interfere. [See *Reynolds v. Ellis*, 103 N. Y. 116, 57 Am. Rep. 701, for example of such lease.]

personal, as a security for an obligation, and the property is so described that the principal things intended to be given or charged can be sufficiently identified, the lien follows.¹ Among the kinds of agreement from which liens have been held to arise, the following are some important examples: Executory agreements which do not convey or transfer any legal estate in the property, but which stipulate that the property shall be security, or which pledge it, for the performance of an obligation.² As an agreement to give a mortgage creates a lien, so a mortgage which, through some informality or defect in its terms or mode of execution, is not complete and valid as a true and proper mortgage, will nevertheless generally create an equitable lien upon the property described.

¹ *Flagg v. Mann*, 2 Sum. 486, 533, per Story, J.: "If a transaction resolve itself into a security, whatever may be its form, and whatever name the parties may choose to give it, it is in equity a mortgage [lien]."

² An agreement by which the maker incurs an obligation, and pledges the produce of certain land, or the land itself, or "gives a lien on land" as security for the performance: *Chase v. Peck*, 21 N. Y. 581; *Gilson v. Gilson*, 2 Allen, 115; *Kirksey v. Means*, 42 Ala. 426; a clause in a lease that the lessor "is to have a lien" upon certain property for the rent: *Whiting v. Eichelberger*, 16 Iowa, 422; an agreement to give a mortgage on the party's share of his father's estate under a will when a division was made: *Lynch v. Utica Ins. Co.*, 18 Wend. 236. And generally a written agreement to give a mortgage on certain land, or even a verbal agreement to give a mortgage on chattels, or a fund of securities, will create an equitable lien: *Husted v. Ingraham*, 75 N. Y. 251, 257; *Hale v. Omaha Nat. Bank*, 49 N. Y. 626; 64 N. Y. 550; *Boorman v. Wisconsin etc. Co.*, 36 Wis. 207; *Monticello etc. v. Loughry*, 71 Ind. 562. For further illustrations of such agreements, see *Skiddy v. Atlantic etc. R. R.*, 3 Hughes, 320; *Arnold v. Morris*, 7 Daly, 498; *Williams v. Ingersoll*, 23 Hun, 284; *Stewart v. Hutchins*, 6 Hill, 143; *Jackson v. Carswell*, 34 Ga. 279;

Mobile etc. R. R. v. Talman, 15 Ala. 472; *Raouillat v. Sansevain*, 32 Cal. 376; *De Leon v. Higuera*, 15 Cal. 483; *Barroilhet v. Battelle*, 7 Cal. 450; [*Gest v. Packwood*, 39 Fed. Rep. 525; *O'Neal v. Seixas*, 85 Ala. 80; *Bell v. Pelt*, 51 Ark. 433; 14 Am. St. Rep. 57; *Parks v. O'Connor*, 70 Tex. 385; and see *Boehl v. Wadgymar*, 54 Tex. 589; *Perry v. Board of Missions*, 102 N. Y. 99; *Bush v. Garner*, 73 Ala. 162 (equitable lien on crop); *Jackson v. Rutherford*, 73 Ala. 155 (parol agreement by debtor that certain personal property "should stand good for his indebtedness").]

Any agreement that certain property shall be appropriated as security for or for the payment of an indebtedness; e. g., an agreement written on the back of a note that it should be a charge upon certain land was held to create a lien on the land: *Peckham v. Haddock*, 36 Ill. 38; and see *Chadwick v. Clapp*, 69 Ill. 119; *Blackburn v. Tweedie*, 60 Mo. 505; [*Butts v. Broughton*, 72 Ala. 294 (declaration in notes that they are "covered by" or "subject to" a prior mortgage); *Prickett v. Sibert*, 71 Ala. 194 (the fact that lands conveyed are described in the purchase-money note does not create an equitable mortgage, as distinguished from the grantor's lien); *Tedder v. Steele*, 70 Ala. 347 (same).]

The intent to give a security being clear, equity will treat the instrument as an executory agreement for such security.¹ An assignment of the rents and profits of land as security for a debt is another mode of creating an equitable lien on the land in favor of the assignee, and the assignment of a lease by way of security produces the same effect.² The assignment for a similar purpose

¹ *Payne v. Wilson*, 74 N. Y. 348; *Daggett v. Rankin*, 31 Cal. 321; *Remington v. Higgins*, 54 Cal. 620; *Newlin v. McAfee*, 64 Ala. 357; *Lewis v. Small*, 71 Me. 552; *In re Howe*, 1 Paige, 125; 19 Am. Dec. 395; *Bank of Muskingum v. Carpenter's Adm'rs*, 7 Ohio, 21; 28 Am. Dec. 616; *Nelson v. Hagerstown Bank*, 27 Md. 51, 76; *Dow v. Ker*, 1 Speers Eq. 414, 417; *Massey v. McIlwain*, 2 Hill Eq. 421, 428; *Welsh v. Usher*, 2 Hill Eq. 167, 170; 29 Am. Dec. 63; *Delaire v. Keenan*, 3 Desaus. Eq. 74; 4 Am. Dec. 604; *Read v. Gaillard*, 2 Desaus. Eq. 552; 2 Am. Dec. 696; [*Wayt v. Carwithen*, 21 W. Va. 516.] Examples: Where the seal was accidentally omitted: *McClurg v. Phillips*, 49 Mo. 315; 57 Mo. 214; *Dunn v. Raley*, 58 Mo. 134; *Harrington v. Fortner*, 58 Mo. 468; *Gill v. Clark*, 54 Mo. 415; [*Allis v. Jones*, 45 Fed. Rep. 148;] where the instrument omitted to state that it was sealed: *Jones v. Brewington*, 58 Mo. 210; where there was no valid acknowledgment: *Black v. Gregg*, 58 Mo. 565; where the instrument was not properly witnessed: *Lake v. Doud*, 10 Ohio, 415; *Abbott v. Godfroy's Heirs*, 1 Mich. 178; where in a trust deed in the nature of a mortgage the name of the trustee was omitted: *McQuie v. Peay*, 58 Mo. 56; *Burnside v. Wayman*, 49 Mo. 356; where a mortgage purporting to be given by a corporation was not executed in its name nor attested by its corporate seal, but was executed in the names of its officers, they having authority, however, to bind the corporation by executing the mortgage in its name, it was held to create an equitable lien: *Love v. Sierra Nevada Co.*, 32 Cal. 639, 652, 653; 91 Am. Dec. 602, per *Shafter, J.*: "It was urged that the defective execution of the mortgage was caused by a mistake of law, and that therefore it cannot be aided. The

answer is, that where there is a defective execution of a power, it is a matter of no equitable moment whether the error came of a mistake of law or a mistake of fact. It is enough that the power existed, and that there was an attempt to act under it. The relief is not so much by way of reforming the instrument as by aiding its defective execution; which aid is administered through or by the application of the maxims already quoted. Or, as in the class of cases to which this belongs, the instrument defectively executed as a deed is considered properly executed as a *contract* for a deed, and therefore as requiring neither reformation nor aid, but as ripe for enforcement according to the methods peculiar to courts of equity." [Where the trust deed was properly acknowledged, but the signature of the grantor was omitted by mistake: *Martin v. Nixon*, 92 Mo. 26; where a mortgage was executed to a partnership in the firm name of the partnership, instead of the separate partners: *Bank v. Johnson*, 47 Ohio St. 306; where a purchase-money mortgage was given by minors to secure part of the price of land conveyed to them: *Peers v. McLaughlin*, 88 Cal. 294.]

² *Ex parte Wills*, 1 Ves. 162 (in which Lord Thurlow, speaking of assignments of rents and profits as a security, said: "It is an odd way of conveying, but it amounts to an equitable lien"); *Jackson v. Green*, 4 Johns. 186; *Smith v. Patton*, 12 W. Va. 541 (a contract charging the rents and profits of land as security). [See also *Smith Co. v. McGuinness*, 14 R. I. 59 (irrevocable power of attorney to collect rents, given as security for money loaned).] A provision in a lease that a building erected by the lessee "is mortgaged as security" for the rent was held to constitute an equitable lien: *Barroilhet v. Battelle*, 7 Cal. 450.

of a contract for the purchase and sale of land may in like manner operate to create an equitable lien in favor of the assignee.¹ The equitable liens which arise from such assignment must largely depend upon a performance of the conditions and stipulations contained in the original contracts, whatever be their form, which are assigned. An equitable lien may sometimes be created upon bills of exchange or upon a consignment upon which bills of exchange are drawn, by means of a specific appropriation, at all events where the drawers or acceptors have become insolvent.² The foregoing instances are sufficient to illus-

¹ The assignment of a contract for the purchase of land, made by the vendee therein, as security for a debt or other obligation, will thus create a lien: *Brockway v. Wells*, 1 Paige, 617; *Fessler's Appeal*, 75 Pa. St. 483; *Fitzhugh v. Smith*, 62 Ill. 486; *Purdy v. Bullard*, 41 Cal. 444. In *Dwen v. Blake*, 44 Ill. 135, land-warrants were thus transferred into the creditor's name as security. A formal mortgage of land by one who only holds the equitable title as vendee under a contract of purchase is, in effect, an assignment of the contract, and constitutes an equitable mortgage or lien: *Alden v. Garver*, 32 Ill. 32.

The assignment of a bond conditioned for the conveyance of land—a form of land contract in general use in several of the states—produces the same effect: *Sinclair v. Armitage*, 12 N. J. Eq. 174; *Neligh v. Michenor*, 11 N. J. Eq. 539; *Alderson v. Ames*, 6 Md. 52; *Fenno v. Sayre*, 3 Ala. 458; *Newhouse v. Hill*, 7 Blackf. 584; *Baker v. Bishop Hill Colony*, 45 Ill. 264; *Bull v. Sykes*, 7 Wis. 449; *Jones v. Lapham*, 15 Kan. 540; *Christy v. Dana*, 34 Cal. 548. [See also *Trader v. Jarvis*, 23 W. Va. 100.] A bond conditioned to convey by deed upon payment of the purchase price is in its operation tantamount to an agreement to convey, and the liens arising from it are identical with the liens of the vendor and the vendee arising from the ordinary contract for the sale of land described in a subsequent section: See *Lewis v. Boskins*, 27 Ark. 61; *Shall v. Biscoe*, 18 Ark. 142; *Gratham v. McCampbell*, Meigs, 52; 33

Am. Dec. 126; *Tanner v. Hicks*, 4 Smedes & M. 294; *Button v. Schroyer*, 5 Wis. 598. The assignment by a vendee of a *partial* interest under his contract of purchase also creates an equitable lien to the extent of such interest: *Northrup v. Cross*, Seld. Notes, 111. The assignment of certificates of purchase of public lands issued by a state as security of a debt in like manner constitutes an equitable lien: *Wright v. Shumway*, 1 Biss. 23; *Heirs of Stover v. Heirs of Bounds*, 1 Ohio St. 107; *Dodge v. Silverthorne*, 12 Wis. 644; *Mowry v. Wood*, 12 Wis. 413; *Jarvis v. Dutcher*, 16 Wis. 307; *Hill v. Eldred*, 49 Cal. 398; [*Stewart v. McLaughlin*, 11 Col. 458;] also, of certificates of stock in a joint-stock company, where such certificates represent land held by the company or its stockholders: *Durkee v. Stringham*, 8 Wis. 1. The lien acquired by the assignee in all these cases is, of course, subject to the payment of the amount due on the contract, bond, or certificate: *Dodge v. Silverthorne*, 12 Wis. 644.

² In the leading case of *Ex parte Waring*, 19 Ves. 345, Lord Eldon rested his decision involving this rule upon the fact that both the drawers and acceptors were insolvent. This view was criticised in *Powles v. Hargreaves*, 3 De Gex, M. & G. 430, but in all the cases in which the rule has been applied it will be found that one or both these parties had become insolvent. In *Ex parte Imbert*, 1 De Gex & J. 152, A bought ten bills of exchange drawn by L. & Co. on a firm in Liverpool. Some time after, L. &

trate the doctrine of equitable lien arising from express contract. They show that the form is immaterial, if the intent appears to make any identified property a security for the fulfillment of an obligation.

SECTION III.

ARISING FROM IMPLIED CONTRACTS.

ANALYSIS.

- § 1238. Nature of "implied contract" in equity.
- § 1239. General doctrine as to liens arising *ex æquo et bono*.
- § 1240. Expenditure by one joint owner.
- § 1241. Expenditure for the benefit of the true owner.
- § 1242. Expenditure by a life tenant.
- § 1243. In other special cases.

§ 1238. Nature of "Implied Contract" in Equity.—The term "implied contract" is a pure fiction of the common-law system of pleading, invented so that certain equitable liabilities, not arising from express promise, but recognized as existing by the courts of law, might

Co. sent other bills to the Liverpool firm, with a letter specifically appropriating them to meet the ten first-mentioned bills, held by A. L. & Co., the drawers, and the Liverpool firm, the drawees, became insolvent. Held, that A had a lien on the bills last sent, and was entitled as against the assignees in bankruptcy that their proceeds should be applied upon the bills which he held; and see *Bock v. Gorrissen*, 2 De Gex, F. & J. 434. In *Frith v. Forbes*, 4 De Gex, F. & J. 409, A consigned a cargo to defendant, and at the same time wrote him that he had drawn a bill of exchange on said cargo in favor of B, "which please protect." On the same day he gave B a bill of exchange drawn on defendant, informing B that it was drawn against the cargo. Defendant refused to accept the bill when presented by B, and A soon after failed. Held, that B had a lien on the proceeds of the cargo in defendant's hands, and was entitled to prior payment out of such proceeds. In the

subsequent cases of *Robey etc. Iron Works v. Ollier*, L. R. 7 Ch. 695, and *Ex parte Lambton*, L. R. 10 Ch. 405, the court held that the mere drawing of a bill of exchange against a cargo or consignment did not of itself create a lien upon the goods or their proceeds in favor of the holder of the bill; and the decision in *Frith v. Forbes* was somewhat criticised. But in the still later case of *Ranken v. Alfaro*, L. R. 5 Ch. Div. 786, the lien was upheld upon facts quite analogous to those of *Frith v. Forbes*. The following cases also involve the question as to such a lien: *Vaughan v. Halliday*, L. R. 9 Ch. 561; *Ex parte Dewhurst*, L. R. 8 Ch. 965; *Ex parte Smart*, L. R. 8 Ch. 220; *City Bank v. Luckie*, L. R. 5 Ch. 773; *Ex parte Alliance Bank*, L. R. 4 Ch. 423; *In re New Zealand Bkg. Co.*, L. R. 4 Eq. 226; see also *post*, § 1284. [The authority of *Frith v. Forbes* has been greatly weakened, if not destroyed, by the cases of *Phelps v. Comber*, 29 Ch. Div. 813, and *Brown v. Kough*, 29 Ch. Div. 848.]

be consistently enforced by the action of *assumpsit*. The phrase is not only a misnomer in equity, but it violates equitable conceptions. There is no necessity for resorting to the notion of "implied contract" to account for the existence of any equitable rights and liabilities which do not arise from express promise. The class of equitable rights and liabilities which at law are referred to the fiction of "implied contract" really exist *ex æquo et bono*; they arise wholly from considerations of right and justice, and from the application to particular conditions of fact of those maxims which lie at the foundation of equity jurisprudence.

§ 1239. **General Doctrine as to Liens Arising ex Æquo et Bono.**—In addition to the general doctrine that equitable liens are created by executory contracts which, in express terms, stipulate that property shall be held, assigned, or transferred as security for the promisor's debt or other obligation, there are some further instances where equity raises similar liens, without agreement therefor between the parties, based either upon general considerations of justice (*ex æquo et bono*), or upon the particular equitable principle that he who seeks the aid of equity in enforcing some claim must himself do equity,—that is, must recognize and admit the equitable rights of the opposite party directly connected with or arising out of the same subject-matter. I shall briefly describe the most important instances which belong to this species of equitable liens.

§ 1240. **Expenditure by One Joint Owner.**—Where two or more persons are joint purchasers or owners of real or other property, and one of them, acting in good faith and for the joint benefit, makes repairs or improvements upon the property which are permanent, and add a permanent value to the entire estate, equity may not only give him a claim for contribution against the other joint owners, with respect to their proportionate shares of the amount thus expended, but may also create a lien

as security for such demand upon the undivided shares of the other proprietors.¹

§ 1241. **Expenditure for the Benefit of the True Owner.** — Such an equitable lien has not always been confined to cases in which a contract to reimburse could be implied at law. The right to a contribution or reimbursement from the owner, and the equitable lien on the property benefited as a security therefor, have been extended to other cases where a party innocently and in good faith, though under a mistake as to the true condition of the title, makes improvements or repairs or other expenditures which permanently increase the value of the property, so that the real owner, *when he seeks the aid of equity* to establish his right to the property itself, or to enforce some equitable claim upon it, having been substantially benefited, is required, upon principles of justice and equity, to repay the amount expended.²

¹ Lake v. Gibson, 1 Eq. Cas. Abr. 290, pl. 3; Lake v. Craddock, 3 P. Wms. 158; 1 Lead. Cas. Eq., 4th Am. ed., 264, 268; Gladstone v. Birley, 2 Mer. 401, 403; Scott v. Nesbitt, 14 Ves. 437, 444; Rathburn v. Colton, 15 Pick. 471. [See also Gavin v. Carling, 55 Md. 530; Alexander v. Ellison, 79 Ky. 148. It is said that a joint tenant has no lien for rents collected by his co-tenant: Burch v. Burch, 82 Ky. 622; but see Scott v. Guernsey, 60 Barb. 163, 180; affirmed 48 N. Y. 106, 124.] If one joint owner makes such expenditures, and the other sues in equity for a partition, allowance will be made for the outlays: Swan v. Swan, 8 Price, 518.

² [In Howard v. Massengale, 13 Lea, 577, it is said that constructive notice merely, without actual knowledge, will not destroy this equity.] In Neesom v. Clarkson, 4 Hare, 97, it was said that while a person expending money through mistake on another's property has no claim in equity for reimbursement, as an *actor*, against the owner, who was ignorant of the expenditure, and did nothing to encourage it: Nicholson v. Hooper, 4 Mylne & C. 179; yet whenever it is necessary for the true owner himself,

under such circumstances, to proceed in equity, the principle that he who seeks equity must do equity will be applied, and he will only be entitled to seek the aid of the court upon making compensation for the outlays. In pursuance of this doctrine, when a person in peaceable possession under claim of lawful title, but really under a defective title, has in good faith made permanent improvements, the true owner, who seeks the aid of equity to establish his own title, will be compelled, it has been held, to reimburse the occupant for his expenditure: [quoted by Ruger, C. J., in Thomas v. Evans, 105 N. Y. 614; 59 Am. Rep. 519;] Robinson v. Ridley, 6 Madd. 2; Att'y-Gen. v. Baliol College, 9 Mod. 407, 411; Bright v. Boyd, 1 Story, 478; 2 Story, 605; Rathburn v. Colton, 15 Pick. 471; Miner v. Beekman, 50 N. Y. 337; Smith v. Drake, 23 N. J. Eq. 302; McLaughlin v. Barnum, 31 Md. 425; Sale v. Crutchfield, 8 Bush, 636; and see Preston v. Brown, 35 Ohio St. 18; [see also Canal Bank v. Hudson, 111 U. S. 66; Hicklin v. Marco, 46 Fed. Rep. 424; Thomas v. Evans, 105 N. Y. 601; 59 Am. Rep. 519; Skiles's Appeal, 110 Pa. St. 248;] but, *per contra*, this doctrine seems to be wholly rejected in Pennsylvania:

§ 1242. **Expenditure by a Life Tenant.** — In pursuance of the same general doctrine, if a tenant for life, holding under a will, expends money in completing permanently beneficial improvements to the property, *which had been commenced by the testator*, such an outlay is held to constitute a valid claim for reimbursement against the reversioner, and an equitable lien upon the property as security for its repayment; while outlays for altogether new and original improvements, being made with full knowledge of the title, would create no such claims.¹

§ 1243. **In Other Special Cases.** — Where a person, not being owner of a policy of life insurance, nor bound to

Appeal of Cross and Gault, 97 Pa. St. 471; [in Skiles's Appeal, 110 Pa. St. 248, and Putnam v. Tyler, 117 Pa. St. 570, the general rule was recognized and followed.] And if the true owner stands by and suffers the occupant, without notice of his title, and acting in innocent mistake, to make repairs and improvements, he will be compelled in equity to repay the amount thus expended, and the claim for repayment will constitute an equitable lien on the property: See *ante*, vol. 2, §§ 807, 821, and cases cited; Shine v. Gough, 1 Ball & B. 436, 444; Lord Cawdor v. Lewis, 1 Younge & C. 427; Preston v. Brown, 35 Ohio St. 18; Green v. Biddle, 8 Wheat. 1, 77, 78; Bright v. Boyd, 1 Story, 478, 493. In all these cases, however, the element of good faith and innocent mistake is essential; for if a person lays out money on another's property, with knowledge or notice of the true state of the title, — e. g., a purchaser with notice of another's title, — he has no claim to be reimbursed, and of course no lien: Rennie v. Young, 2 De Gex & J. 136; Ramsden v. Dyson, L. R. 1 H. L. 129; Cook v. Kraft, 3 Lans. 512; Davidson v. Barclay, 63 Pa. St. 406; Dart v. Hercules, 57 Ill. 446; Cannon v. Copeland, 43 Ala. 252. [See also Effinger v. Hall, 81 Va. 94; Gordon v. Tweedy, 74 Ala. 232; 49 Am. Rep. 813; Gresham v. Ware, 79 Ala. 192; Cable v. Ellis, 119 Ill. 136.] Finally, in order that there may be a claim for reimbursement and a lien as security therefor in any case of this general

kind, either the aid of a court of equity must be requisite on behalf of the owner against whom the claim for reimbursement is made, so that he can be compelled to do equity, or else there must be some element of fraud in the transaction as ground of equitable interference. If, therefore, the true owner can recover his land by an action at law, equity will not, in the absence of fraud, compel him to reimburse the occupant even in good faith for disbursements made in repairs and improvements: See *ante*, §§ 807, 821; Moore v. Cable, 1 Johns. Ch. 385; Green v. Winter, 1 Johns. Ch. 26, 39; 7 Am. Dec. 475; Putnam v. Ritchie, 6 Paige, 390, 403; Bright v. Boyd, 1 Story, 478, 494. [See also Gordon v. Tweedy, 74 Ala. 232; 49 Am. Rep. 813.] This rule has been changed by statute in several of the states, which allow compensation to defendants, even in actions of ejectment, when the land is recovered from them for the "betterments" which they have added to the land: [See Jones on Liens, secs. 1140-1146.]

¹ Hibbert v. Cooke, 1 Sim. & St. 552; Dent v. Dent, 30 Beav. 363 (a life tenant allowed for certain improvements, but not for others); Dunne v. Dunne, 3 Smale & G. 22; In re Leigh's Estate, L. R. 6 Ch. 887; Sohler v. Eldredge, 103 Mass. 345; see Floyer v. Banks, L. R. 8 Eq. 115; Taylor v. Foster's Adm'r, 22 Ohio St. 255; and Todd v. Moorhouse, L. R. 19 Eq. 69. [See also Gavin v. Carling, 55 Md. 530.]

pay the premium, but having some claim or color of interest in it, voluntarily pays the premiums thereon, and thus keeps it alive for the benefit of a third party, he may thereby acquire an equitable lien on the proceeds of the policy as security for the repayment of his advances.¹ There are certain maritime liens which have sometimes been recognized and enforced by courts of equity in England, but which in this country would rather belong to the exclusive jurisdiction of admiralty.² Another equitable lien, recognized and enforced by courts of equity, is that ordinarily known as "the partners' lien,"—a lien which each partner has upon the entire firm assets, as a security that those assets shall be applied in discharge of the firm debts, and that he shall receive his just share of the surplus remaining after all the firm debts are paid.³

¹ *Norris v. Caledonian Ins. Co.*, L. R. 8 Eq. 127; *Gill v. Downing*, L. R. 17 Eq. 316. Mr. Snell, on the authority of these cases, lays down as a general rule that when *any* person pays the premiums in order to keep a policy alive, he becomes entitled to a lien on the proceeds: *Snell's Equity*, 115. The cases certainly fall very far short of establishing such a general rule: [*Meier v. Meier*, 15 Mo. App. 68; affirmed 88 Mo. 566.] It is doubtful, indeed, whether they lay down any rule at all, certainly none more extensive than that given above in the text.

In *Todd v. Moorhouse*, L. R. 19 Eq. 69, it was held that where a life tenant, under a settlement comprising shares in stock companies, at the request of the trustees pays the calls on the shares, and thus prevents their forfeiture and loss to the estate, he has a lien on the shares for his advances, with interest.

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² They are the liens which materialmen have for repairs or supplies furnished to a foreign ship in a domestic port: See *The Aurora*, 1 Wheat. 96, 105; *The General Smith*, 4 Wheat. 435, and similar cases; and that which the part owner of a ship may have for his advances towards her outfit, on the proceeds of her voyage, or on the ship itself: See *Doddington v. Hallet*, 1 Ves. Sr. 497, per Lord Hardwicke; *Ex parte Young*, 2 Ves. & B. 242, per Lord Eldon; *Nicoll v. Mumford*, 4 Johns. Ch. 522; 20 Johns. 611. As these particular liens are wholly maritime, and belong to the admiralty jurisdiction, any discussion of their nature and extent is unnecessary.

³ This lien is mentioned here in order to complete the general survey: See *West v. Skip*, 1 Ves. Sr. 239, 456; *Lake v. Gibson*, 1 Lead. Cas. Eq., 4th Am. ed., 264, 268; *Mycock v. Beatson*, L. R. 13 Ch. Div. 384; *Nicoll v. Mumford*, 4 Johns. Ch. 522.

SECTION IV.

ARISING FROM CHARGES BY WILL OR BY DEED.

ANALYSIS.

§ 1244. General doctrine; nature of a charge.

§ 1245. What amounts to a charge creating such a lien.

§ 1246. The same; express charge.

§ 1247. The same; implied charge; English and American rules stated in foot-note.

§ 1248. Observations upon the rules adopted by American courts.

§ 1244. **General Doctrine—Nature of a “Charge.”**—Another species of equitable lien not growing out of contract directly between the parties arises when specific property — a lot of land, a fund of securities, or the land contained in a residuary devise — is conveyed, devised, or bequeathed subject to or charged with the payment of debts, legacies, portions, or annuities in favor of third persons given by the same instrument. The legal title to the property vests in the grantee, devisee, or other recipient, but a lien thereon is created in favor of the beneficiary named, which can be enforced in equity. Where, for example, land is devised charged with the payment of the testator's debts generally, a lien arises in favor of the creditors, and any one or more of these can enforce it against the land so devised; or where a lot is devised charged with the payment of a particular legacy, the legatee can in like manner enforce his lien against such tract in the hands of the devisee.¹ There is a plain

¹ Such charges may be contained in conveyances *inter vivos*, and are sometimes found in family settlements, real estate settled upon sons being charged with the payment of portions in favor of daughters, and the like. They are much more frequently, especially in this country, found in wills. When real estate given by will is thus charged with the payment of debts and legacies, the effects may be various. The first, and per-

haps the most important, result from the ordinary form of such charge is, to break over the common-law rule which makes the personal property the fund out of which debts and legacies are primarily payable, and to render the real estate of the testator liable *pari passu* with the personal for such payment. Still the charge may be made in such terms as to exonerate the personalty, and thus to admit the doctrine of marshaling.

distinction pointed out in the previous chapter on trusts, between a gift of property in trust merely to pay debts or

When the charge is of the ordinary form, not exonerating the personalty, the creditor or legatee is not precluded from enforcing his demand in the usual manner against the executor in the regular course of administration. But in addition to that ordinary mode of compelling payment of his debt or legacy, he is also entitled to enforce his lien upon the land or other specific fund charged with its payment, against the devisee or person deriving title from or under the devisee, by means of a suit in equity. In the very recent case of *Brown v. Knapp*, 79 N. Y. 136, which was a suit in equity to enforce such a lien in favor of a legatee, the court said: "The executor also contended that this legacy was payable only out of the personal estate, and that there was not sufficient of such estate to pay the two legacies given in the will. It is claimed on the part of the plaintiff that the legacy was charged upon the real estate; and I am of that opinion. It is well settled that when a legacy is given and is directed to be paid by the person to whom real estate is devised, such real estate is charged with the payment of the legacy. And the rule is the same when the legacy is directed to be paid by the executor who is the devisee of real estate [citing many cases]. If the devisee in such case accepts the devise, he becomes personally bound to pay the legacy, and he becomes thus bound even if the land devised to him proves to be less in value than the amount of the legacy. If he desires to escape responsibility, he must refuse to accept the devise. If he does accept, he becomes bound to pay the whole amount of the legacy which he is directed to pay. The payment of such a legacy can be enforced by a suit in equity against the real estate, or by a common-law action directly against the devisee upon the implied promise to pay it,—a promise implied by his acceptance of the devise." It should be remarked, however, in this connection, that every charge does not thus render the devisee personally liable. Where the charge consists, as above stated, in a direction that the devisee

shall pay a legacy or debt, his acceptance creates a personal liability: [*Williams v. Nichol*, 47 Ark. 254.] But where there is no such direction, and the land is given simply subject to the payment, or the charge is in any manner made upon the land alone, the devisee assumes no personal liability; the remedy of the legatee or creditor, based upon such charge, is confined to his enforcement of the lien upon the land. In enforcing the lien on behalf of a legatee, the English courts will determine whether it should be done by a sale or by a mortgage of the lands. As illustrations of the text, see *King v. Denison*, 1 Ves. & B. 260, 272, 276; *Hill v. Bishop of London*, 1 Atk. 618, 620; *Graves v. Graves*, 8 Sim. 43; *Bright v. Larcher*, 4 De Gex & J. 608; *Makings v. Makings*, 1 De Gex, F. & J. 355; *Richardson v. Morton*, L. R. 13 Eq. 123 (legatee held not entitled on the special facts); *Pearson v. Helliwell*, L. R. 18 Eq. 411; *Metcalfe v. Hutchinson*, L. R. 1 Ch. Div. 591; *Hoyt v. Hoyt*, 85 N. Y. 142; *Finch v. Hull*, 24 Hun, 226; *Dill v. Wisner*, 23 Hun, 123; *Ferris v. Van Vechten*, 9 Hun, 12; *Loder v. Hatfield*, 4 Hun, 36; *Horning v. Wiederspahlen*, 28 N. J. Eq. 387; *Grode v. Van Valen*, 25 N. J. Eq. 95; *Gardenville* etc. *Ass'n v. Walker*, 52 Md. 452; *Siron v. Ruleman's Ex'r*, 32 Gratt. 215; *Burch v. Burch*, 52 Ind. 136; *Rhoades v. Rhoades*, 83 Ill. 139. And the lien may be enforced not only against the devisee, but also against his grantees, mortgagees, etc.: *Perkins v. Emory*, 55 Md. 27; *Donnelly v. Edelen*, 40 Md. 117 (against purchaser of the land at an execution sale); *Blauvelt v. Van Winkle*, 29 N. J. Eq. 111; [*Nudd v. Powers*, 136 Mass. 273; if sold in parcels, these are subject in the inverse order of alienation: *Scott v. Patchin*, 54 Vt. 253; *Lovejoy v. Raymond*, 58 Vt. 509; see *ante*, § 1224;] and a record of the will and probate is notice to such grantee: *Wilson v. Piper*, 77 Ind. 437; [*Scott v. Pattison*, 54 Vt. 253; *Lovejoy v. Raymond*, 58 Vt. 509.] Where a legacy was charged upon a fund of personal property bequeathed to testator's widow, the decree held her

legacies, and a gift of property charged with or subject to the payment of debts or legacies.

§ 1245. **What Amounts to a Charge Creating Such a Lien.** — Since, according to the settled general doctrine, the personalty is ordinarily the primary fund for the payment of debts, and is the primary and even only fund for the payment of legacies as between the legatees and the devisees, it follows that an intention on the part of the testator to change this natural order by a charge upon lands devised, which should render them primarily or even ratably liable for the payment of all or of any particular debts or legacies, must clearly appear, either from the express language of the will or by fair and necessary implication from the various dispositions made by the testator.¹ A charge of debts or legacies upon lands devised may be either express or implied.

§ 1246. **The Same. Express Charge.** — A testator may in express terms charge the payment of all his debts, or any individual debt, and all his legacies, or any of them, either upon the lands devised by a residuary clause, or upon any particular lot or parcel of land specifically devised, and the charge may be upon the *corpus* of the land, or upon the rents and profits alone. The same is true of an express charge upon any particular fund of personal property bequeathed, or upon the residue given to the residuary legatee. What language will amount to an express charge must always be a matter of construction and interpretation, depending upon the terms em-

personally liable for its payment, and as a security for its payment sequestered the rents and profits of her lands: *Talbot v. Rountree*, 3 Ill. App. 275. The remedy of the legatee may be defeated by his laches in enforcing the lien, — here a delay of fifty-three years after the testator's death: *Smiley v. Jones*, 3 Tenn. Ch. 312. As to the distinction between a gift *in trust* to pay debts or legacies, and a gift merely *subject to or charged with* such payment, see *ante*, § 1033, note. Such

charge is not a trust: *Dill v. Wisner*, 88 N. Y. 153, 158; *In re Fox*, 52 N. Y. 530, 536, 537; 11 Am. Rep. 751.

¹ *Hoyt v. Hoyt*, 85 N. Y. 142; *Taylor v. Dodd*, 58 N. Y. 335; *Owens v. Claytor*, 56 Md. 129; *Steele v. Steele's Adm'r*, 64 Ala. 438; 38 Am. Rep. 15; *Taylor v. Harwell*, 65 Ala. 1; *Heslop v. Gatton*, 71 Ill. 523; *Kirkpatrick v. Chesnut*, 5 S. C. 216. [See also *Matter of Powers*, 124 N. Y. 361; *Arnold v. Deau*, 61 Tex. 249; *Clift v. Moses*, 116 N. Y. 144.]

ployed in each individual case. Some examples of express charges are given in the foot-note.¹

¹ The express charges here referred to all arise independently of the nature and form of the general dispositions of his property made by the testator. The charge may be in the most positive and certain terms; as, "I hereby direct that the debt due to A, or the legacy given to A, shall be a charge upon the land herein devised to B"; or "the land herein devised to B is subject to or charged with the payment of the debt — or the legacy — to A," and the like; or "I direct that the payment of all my debts — or of all the legacies herein given — be charged upon the real estate devised by my will," etc. Again, an express charge may be personal. If testator devises a parcel of land to A, and then directs that A shall pay a certain debt due to B, or a certain legacy given to B, or uses language of like import, the land devised to A is not only charged with the payment, but the devisee himself, by accepting the gift, becomes personally liable therefor to the creditor, or legatee, B: *Brown v. Knapp*, 79 N. Y. 136, 143; *Dodge v. Manning*, 1 N. Y. 298; *Reynolds v. Reynolds*, 16 N. Y. 257; *Gridley v. Gridley*, 24 N. Y. 130; *McLachlan v. McLachlan*, 9 Paige, 534; *Harris v. Fly*, 7 Paige, 421; *Mensch v. Mensch*, 2 Lans. 235; *Wood v. Wood*, 26 Barb. 356; *Olmstead v. Brush*, 27 Conn. 530; [*Couch v. Eastham*, 29 W. Va. 784.] It should be observed, however, in this connection, that the courts of several states *virtually* require every charge upon land devised to be express, and hold that a direction to a devisee, A, that he shall pay a certain legacy or debt does not, without further language of the testator showing such an intention, create a charge on the land devised to A: See *Cable's Appeal*, 91 Pa. St. 327; *Owens v. Claytor*, 56 Md. 129; [*Penny's Appeal*, 109 Pa. St. 323. In Virginia, the realty must be expressly charged: *Allen v. Patton*, 83 Va. 255.] On the other hand, a mere charge on the land devised, or devise of the land merely subject to or charged with a debt or legacy, does not create a personal liability upon the devisee, — that is, a liability be-

yond the value of the land in his hands: [*Clift v. Moses*, 116 N. Y. 144.] The following are examples of express charges found in recent decisions: In re *Cooper's Trusts*, 4 De Gex, M. & G. 757; *Kempe v. Kempe*, 5 De Gex, M. & G. 346; *Makings v. Makings*, 1 De Gex, F. & J. 355; *Maskell v. Farrington*, 3 De Gex, J. & S. 338 (a general charge of all debts and all legacies upon the whole of testator's real estate charges the legacies upon lands specifically devised); *Phillips v. Gutteridge*, 3 De Gex, J. & S. 332 (a legacy charged upon rents and profits is charged upon the *corpus*); *Earl of Portarlington v. Damer*, 4 De Gex, J. & S. 161; *Brook v. Badley*, L. R. 4 Eq. 106; 3 Ch. 672 (a legacy thus charged is an interest in land); In re *Hill's Trusts*, L. R. 16 Ch. Div. 173 (same); *Mannox v. Greener*, L. R. 14 Eq. 456; *Taylor v. Taylor*, L. R. 17 Eq. 324 (on rents and profits, not on the *corpus*); [*Irwin v. Wollpert*, 128 Ill. 527 (same);] *Birch v. Sherratt*, L. R. 2 Ch. 644; *Kermode v. Macdonald*, L. R. 3 Ch. 584; *Metcalfe v. Hutchinson*, L. R. 1 Ch. Div. 591 (charge on rents and profits is *prima facie* a charge on the *corpus*); a testatrix devised to each of her three daughters one third of her estate, "provided there shall be set apart from her share" a certain legacy to each of her children payable when such children reached the age of twenty-one; held, that these legacies to the grandchildren were charged respectively on each parent's share: *Frampton v. Blume*, 129 Mass. 152; a farm being devised to testator's son "upon condition that he shall keep, provide for, and support" the testator's widow, the land is thereby charged in hands of the devisee and of his grantee: *Gardenville* etc. *Ass'n v. Walker*, 52 Md. 452; *Donnelly v. Edelen*, 40 Md. 117; [devise upon condition that the devisee pay an annuity to a certain church creates a charge upon the land: *Merritt v. Bucknam*, 78 Me. 504;] lands devised subject to testator's debts, his widow's allowance, and the rebuilding of certain houses on vacant lots, creates a charge: *Caruthers v. McNeill*, 97 Ill. 256; a bequest of the use of a certain

§ 1247. **The Same. Implied Charge.**—The intention of a testator to charge debts and legacies upon the real estate devised may also be implied from the general dispositions of the will,—from the mode in which the real and the personal property are donated. The English and the American decisions all recognize this fact, but they are not all agreed upon the effects produced by particular dispositions. In England, a number of general rules on this subject have been definitely settled as a part of the law concerning property.¹ These rules are based upon

room in a house devised to another creates a charge on the devise: *Ogle v. Tayloe*, 49 Md. 158; a devise of land, and then a direction to the devisee to pay a certain legacy bequeathed to another, creates a charge on the land so devised: *Ogle v. Tayloe*, *supra*; *Horning v. Wiederspallen*, 28 N. J. Eq. 387; *Merrill v. Bickford*, 65 Me. 118; *Wilson v. Piper*, 77 Ind. 437; *Markillie v. Ragland*, 77 Ill. 98; [*Yearly v. Long*, 40 Ohio St. 27; *Dudgeon v. Dudgeon*, 87 Mo. 218;] *per contra*, such a direction does not constitute a charge: *Kirkpatrick v. Chesnut*, 5 S. C. 216; *Cable's Appeal*, 91 Pa. St. 327; *Owens v. Claytor*, 56 Md. 129. See also *Talbot v. Rountree*, 3 Ill. App. 275; *Bayless v. Bayless*, 6 Baxt. 324; *Hoyt v. Hoyt*, 85 N. Y. 142; *Dill v. Wisner*, 23 Hun, 123; *Perkins v. Emory*, 55 Md. 27; *Siron v. Ruleman's Ex'r*, 32 Gratt. 215; *Harkins v. Hughes*, 60 Ala. 316; *Burch v. Burch*, 52 Ind. 136; [*Canal Bank v. Hudson*, 111 U. S. 66.]

¹ The following is a brief summary of the most important of these rules. In general, the same rules apply alike to charges of debts and of legacies: *Wheeler v. Howell*, 3 Kay & J. 198.

1. Where a testator directs, in terms however general, that his debts or legacies shall be paid, not saying *by his executors*, and afterwards devises his real estate, the devisees take the land devised charged with the payment; and it is not necessary that the direction to pay should be accompanied with such words as "in the first place," "*inprimis*," and the like, although in some of the early cases they were treated as important: *Shallcross v. Finden*, 3 Ves. 738; *Graves v.*

Graves, 8 Sim. 43, 55; *Cook v. Dawson*, 29 Beav. 123; *Harris v. Watkins*, Kay, 438, 447; *Harding v. Grady*, 1 Dru. & War. 430; *Ronalds v. Feltham*, Turn. & R. 418; *Douce v. Lady Torrington*, 2 Mylne & K. 600; *Taylor v. Taylor*, 6 Sim. 246; *Jones v. Williams*, 1 Coll. C. C. 156; *Coxe v. Basset*, 3 Ves. 155.

2. The same result follows when *executors* are directed to pay the debts or legacies, and real estate is devised to them, either personally or as executors; in either case the land so devised is charged: *Henvell v. Whitaker*, 3 Russ. 343; *Cross v. Kennington*, 9 Beav. 150; *Gallimore v. Gill*, 2 Smale & G. 158; *8 De Gex, M. & G. 567*; *Preston v. Preston*, 2 Jur., N. S., 1040; *Dormay v. Borradaile*, 10 Beav. 263; *Hartland v. Murrell*, 27 Beav. 204; *In re Tanqueray-Willaume*, L. R. 20 Ch. Div. 465; *In re Bailey*, L. R. 12 Ch. Div. 268; *Parker v. Fearnley*, 2 Sim. & St. 592, *contra*, is overruled. But a devise to only one of two or more executors does not operate to charge his estate: *Warren v. Davies*, 2 Mylne & K. 49; unless the devise to him is expressly *subject* to the debts: *Dowling v. Hudson*, 17 Beav. 248.

3. But where *executors* are simply directed to pay debts or legacies, and *no real estate is devised to them*, the lands devised to others are not charged, since it is always the duty of the executors to pay debts and legacies out of the personality: *Powell v. Robins*, 7 Ves. 209; *Willan v. Lancaster*, 3 Russ. 108.

4. Where legacies are given generally, and this is followed by a residuary devise of the rest or residue of the real and personal property as

three main considerations or motives of interpretation: 1. That a gift of personal property, in terms, *after* the payment of debts or legacies indicates that the debts or legacies are to be paid out of the real as well as the personal estate; 2. That a direction in any form *to a devisee* to pay debts or legacies indicates an intention that the payment must or may be made out of the real estate devised to him; and 3. That a gift of legacies or a direction to pay debts, followed by a gift of *the residue* of the real and personal estate, indicates an intention that the former are to be paid out of the testator's real as well as his personal estate, *since otherwise there could not be any residue of the real estate*. These general canons of interpretation, and the several rules based upon them, as formulated in the footnote, have not been fully adopted and acted upon by the courts of the American states.¹ The doctrine that a de-

one mass, the legacies are charged upon this residue of the real as well as the personal estate: *Cole v. Turner*, 4 Russ. 376; *Greville v. Browne*, 7 H. L. Cas. 689; *Wheeler v. Howell*, 3 Kay & J. 198; *Gyett v. Williams*, 2 Johns. & H. 429; *In re Bellis's Trusts*, L. R. 5 Ch. Div. 504; *Bray v. Stevens*, L. R. 12 Ch. Div. 162; *In re Brooke*, L. R. 3 Ch. Div. 630. Such a general charge, however, of legacies on the residue of real and personal property does not charge property which is *specifically* devised or bequeathed: *Castle v. Gillett*, L. R. 16 Eq. 530; *Spong v. Spong*, 3 Bligh, N. S., 84; *Conron v. Conron*, 7 H. L. Cas. 168; but it is otherwise when *both debts and legacies* are thus charged: *Maskell v. Farrington*, 8 Jur., N. S., 1198; 3 De Gex, J. & S. 338.

5. Where legacies are generally given, and this is followed by a direction to convert the real estate, and that its proceeds shall be deemed a part of the residuary personal estate, the legacies are thereby charged on the entire fund, notwithstanding the residue may be specifically bequeathed: *Field v. Peckett*, 29 Beav. 568.

6. A devise of real estate, followed by a bequest of personal estate *after payment of debts*, operates to charge the debts on the real as well as the

personal property: *Withers v. Kennedy*, 2 Mylne & K. 607; *Soames v. Robinson*, 1 Mylne & K. 500; *Shakels v. Richardson*, 2 Coll. C. C. 31; and see *Jones v. Price*, 11 Sim. 557; *Bright v. Larcher*, 3 De Gex & J. 148; and see 2 Lead. Cas. Eq., 4th Am. ed., 369-372, note to *Silk v. Prime*.

¹ The very recent case of *Hoyt v. Hoyt*, 85 N. Y. 142, 146, 149, discloses so clearly the condition of the American law, and indicates so plainly the points of difference between it and the English rules, that I shall quote some passages from the opinion of Folger, C. J. He says (p. 146): "There is no express direction in this will that these legacies shall be charged upon the real estate. Yet legacies may be charged upon real estate without express direction in the will, if the intention of the testator so to do can be fairly gathered from all the provisions of the will; and extraneous circumstances may be considered in aid of the terms of the will. The will, in this case, is lean of the clauses and expressions that have been mainly rested upon in the earlier adjudications of this state as showing that intention. It does not direct the legacies to 'be first paid,' and then devise the real estate; it does not devise the real estate, nor the remain."

wise to the executors or to third persons, accompanied by a direction to pay debts or legacies, and that a devise, sub-

der of the real and personal estate, 'after the payment of the legacies'; it does not devise the real estate to a person in his own right, or as executor, and expressly direct him to pay the legacies; it does not make a residuary devise of 'all not herein otherwise disposed of.' These several forms of expressions have been held to indicate an intention in the testator to charge the payment of the legacies upon the real estate devised. None of them are here." The same judge further said (p. 149): "It is a rule in England that if legacies are given generally, and the residue of the real and personal estate is afterwards given in one mass, the legacies are a charge on the residuary real as well as the personal estate [citing English cases quoted in the last note]. Such is the rule in some of the states of the Union, and in the United States supreme court [citing several cases quoted subsequently in this note]. We were urged to adopt this rule in deciding *Bevan v. Cooper*, 72 N. Y. 317; but while we did not undertake to question the soundness of the reasoning in the decisions there cited, we had in mind the remarks of the chancellor in *Lupton v. Lupton*, 2 Johns. Ch. 614, 623, and of *Potter, J.*, in *Myers v. Eddy*, 47 Barb. 263; and as we could dispose of the case then without adopting or rejecting the rule, we did neither. Nor is it needed in the case at hand that we adopt the close rule above given, or question the correctness of *Lupton v. Lupton* and *Myers v. Eddy*. As we understand them, they assert that, unaided and alone, the words which make up the usual residuary clause of a will are not enough to evince an intention in the testator to charge a general legacy upon real estate." I would remark that, so far as I am aware, no case holds that the words of a residuary clause, unaided and alone, can, of themselves, produce such an effect. The rule, as settled by English decisions, is certainly very different.

The following collection of American cases, mostly recent, will furnish a general view of the condition of the law on this subject in the various

states; but still, for a perfectly accurate notion, the decisions of each state must be separately examined.

1. The English rules, that a devise, either to the executors or to third persons, accompanied by a direction to pay debts or legacies, creates a charge upon the lands devised, and that a devise "after payment of" debts or legacies, or with the debts or legacies "to be first paid," and the like, also creates a charge, have been generally adopted by the courts of this country. Many cases illustrating these conclusions have already been cited in the foregoing notes under § 1247. See also *Chapin v. Waters*, 116 Mass. 140; *Lapham v. Clapp*, 10 R. I. 543; *Hoyt v. Hoyt*, *supra*; *Guelich v. Clark*, 3 Thomp. & C. 315; *Corwine v. Corwine*, 24 N. J. Eq. 579; 23 N. J. Eq. 368; *Bynum v. Hill*, 71 N. C. 319; *Finch v. Hull*, 24 Hun, 226; *Stoddard v. Johnson*, 13 Hun, 606; *Smith v. Fellows*, 131 Mass. 20 (after payment of legacies, etc.); *O'Donnell v. Barbey*, 129 Mass. 453 (same); [*Pond v. Allen*, 15 R. I. 171;] *Hill v. Jones*, 65 Ala. 214; *Ogle v. Tayloe*, 49 Md. 158 (devisee directed to pay a legacy); *Turner v. Turner*, 57 Miss. 775 (same); *Merrill v. Bickford*, 65 Me. 118 (same); *Tuohy v. Martin*, 2 McAr. 572 (after payment, etc.); but *per contra*, in Alabama, a devise after payment of debts does not create a charge: *Starke v. Wilson*, 65 Ala. 576. [See also *Cram v. Cram*, 63 N. H. 35 (devise to executor); *Thayer v. Finnegan*, 134 Mass. 62; 45 Am. Rep. 285 (same).]

2. Gift of the residue of real and personal estate. The English doctrine as to the effect of a gift of the residue of real and personal property in one mass, after general legacies, is the one which the American courts have been most reluctant to adopt, and in respect of which there is the greatest diversity of opinion among their decisions. In *New York* the court of last resort has neither accepted nor rejected the English rule, while the decisions of lower courts — the supreme court and the court of chancery — are directly conflicting. The doctrine thus far settled by

stantially, in terms, "after payment of debts or legacies," indicate an intention of the testator to charge the lands

weight of authority in New York is as follows: When legacies are given generally, and the residue of the real and personal estate is afterwards devised in one mass, and it *appears from other provisions on the face of the will* that the testator must have contemplated, from the known condition of his property, that the personal estate would not be sufficient to pay his legacies, and that they could not be paid without resorting to the real estate embraced within the terms of the residuary clause, then an intention on his part will be implied that the legacies shall be payable out of such real estate as well as out of the personalty; or in other words, the residue of the real estate will be charged with their payment. In *Hoyt v. Hoyt*, above quoted, Folger, C. J., said (p. 147): "It is assumed that no man, in making a final disposition of his estate, will make a legacy, save with the honest, sober-minded intention that it shall be paid. Hence when, from the provisions of a will prior to the gift of legacies, it is seen that the testator must have known that he had already so far disposed of his personal estate as that there would not be enough left to pay the legacies, it is reasoned that the bare fact of giving a legacy indicates an intention that it shall be met from real estate. So it was reasoned in *Goddard v. Pomeroy*. Courts have been urged to go a step further, and say, when the facts of the estate, *aliunde* the will, show that the testator must have known that if a legacy was to be paid only from personal estate it would be a barren gift, he must have intended to subject the real estate to a liability for it. We were so urged in *Bevan v. Cooper*, but could not yield to it": *Bevan v. Cooper*, 72 N. Y. 317; *Le Fevre v. Toole*, 84 N. Y. 95; *Kalbfleisch v. Kalbfleisch*, 67 N. Y. 354; *Taylor v. Dodd*, 58 N. Y. 335; *Reynolds v. Reynolds*, 16 N. Y. 257; *Lupton v. Lupton*, 2 Johns. Ch. 614; *Myers v. Eddy*, 47 Barb. 263; *Shulters v. Johnson*, 38 Barb. 80; *Goddard v. Pomeroy*, 36 Barb. 546, 556; *Finch v. Hull*, 24 Hun, 226; *Stoddard v. Johnson*, 13 Hun, 606; [*Scott v. Stebbins*, 91 N. Y. 605;

McCorn v. McCorn, 100 N. Y. 511;] but in the following cases the supreme court seems rather to have followed the English rule without limitation: *Forster v. Civill*, 20 Hun, 282; *Hall v. Thompson*, 23 Hun, 334; *Ragan v. Allen*, 7 Hun, 537; *Buckley v. Buckley*, 11 Barb. 43, 77. The conclusions maintained as above by the New York court of appeals have been substantially adopted in Connecticut: *Canfield v. Bostwick*, 21 Conn. 550; *Gridley v. Andrews*, 8 Conn. 1; [see also *White v. Kaufmann*, 66 Md. 89.] In New Jersey, a series of cases finds the intent to charge legacies upon the real estate given with the personal in one mass by the residuary clause from facts and circumstances outside of the provisions of the will, from the fact that the legacies are given to children, that the personal property is actually insufficient, and the like: *Van Winkle v. Van Houten*, 3 N. J. Eq. 172, 187; *Leigh v. Savidge*, 14 N. J. Eq. 124; *Dey v. Dey's Adm'r*, 19 N. J. Eq. 137; *Corwine v. Corwine's Ex'rs*, 23 N. J. Eq. 368; *Massaker v. Massaker*, 13 N. J. Eq. 264. But in the later case of *Corwine v. Corwine*, 24 N. J. Eq. 579, the English rule seems rather to have been followed. In *Johnson v. Poulson*, 32 N. J. Eq. 390, the testator gave legacies to his three daughters, and then devised to his sons "all the rest and residue of my property, . . . subject, nevertheless, to certain payments to be made by them *hereinafter mentioned*," and finally gave an annuity and another legacy. Held, that these latter dispositions showed an intent that the first legacies to the three daughters were not to be charged upon the residue.

In the United States supreme court and in several of the states, the English rule as to legacies being charged on the residuary real estate is adopted without modification: *Lewis v. Darling*, 16 How. 1; *Hays v. Jackson*, 6 Mass. 149; *Adams v. Brackett*, 5 Met. 280, 282; *Wilcox v. Wilcox*, 13 Allen, 252; *Smith v. Fellows*, 131 Mass. 20; *Gallagher's Appeal*, 48 Pa. St. 121; *Becker v. Kehr*, 49 Pa. St. 223; *McGlaughlin v. McGlaughlin*, 24 Pa. St. 20; *Davis's Appeal*, 83 Pa. St. 348;

so devised has been generally adopted and acted upon in this country, although not without modification and even exception in a few of the states. Our courts have shown a much greater reluctance to adopt the English doctrine concerning the effect of a gift of the residue of the real and personal property in one mass, made after a bequest of general legacies. By the United States courts, and by the courts of several states, the doctrine has been fully accepted. In certain states it has been directly rejected; while in still another group a modification of it has been

Wert's Appeal, 69 Pa. St. 173; *Brisben's Appeal*, 70 Pa. St. 405; *Robinson v. McIver*, 63 N. C. 645, 649; *Hart v. Williams*, 77 N. C. 426; *Moore v. Beckwith's Ex'r*, 14 Ohio St. 129, 135; *Clyde v. Simpson*, 4 Ohio St. 445, 459; *Knotts v. Bailey*, 54 Miss. 235; 28 Am. Rep. 348; *Lapham v. Clapp*, 10 R. I. 543; *Derby v. Derby*, 4 R. I. 414, 431; *Corwine v. Corwine*, 24 N. J. Eq. 579; and see *Hall v. Thompson*, 23 Hun, 334; *Forster v. Civill*, 20 Hun, 282; *Ragan v. Allen*, 7 Hun, 537; *Buckley v. Buckley*, 11 Barb. 43, 77. [See also *Cook v. Petty*, 108 Pa. St. 138; *Thomas v. Rector*, 23 W. Va. 26; *Heatherington v. Lewenberg*, 61 Miss. 372; *Lafferty v. People's Savings Bank*, 76 Mich. 35; *Hutchinson v. Gilbert*, 86 Tenn. 464; *Atmore v. Walker*, 46 Fed. Rep. 429; *Jandon v. Ducker*, 27 S. C. 295.]

In the following cases no charge, it was held, is created: A will contained a general direction for paying debts; an equal share of the whole estate was given to each child; and a codicil gave pecuniary legacies, directing them to be paid without delay: the land held not charged with the legacies; *Power v. Davis*, 3 McAr. 153. In Alabama a power to sell lands for payment of debts contained in the will does not create a charge on the lands; the court leans strongly *against* an interpretation which would create a charge of either debts or legacies; the general rules of charges by implication do not seem to be followed: *Steele v. Steele's Adm'r*, 64 Ala. 438; 38 Am. Rep. 15; *Taylor v. Harwell*, 65 Ala. 1. [See also *Lewis v. Ford*, 67 Ala. 143; *Newsom v. Thornton*, 82 Ala. 402; 60 Am. Rep. 743. Charge

by implication not recognized in Virginia: *Allen v. Patton*, 83 Va. 255.] Even a devise or bequest "after payment of debts" does not charge the debts: *Starke v. Wilson*, 65 Ala. 576. A will, "after all my debts are paid," gave the widow her support from the home farm, then several pecuniary legacies, then a specific tract of land to one son, A., then to another son, F., "all the residue of my lands in T. and U. counties," and finally divided the residue of the personal estate among all the children, and appointed F. executor; held, that the legacies were not charged on any of the lands devised, and that the appointment of F. as executor did not operate to charge the lands devised to him: *Read v. Cather's Adm'r's*, 18 W. Va. 263 (this case seems to conflict with the general course of authorities). No charge of the legacy results from a simple devise of real estate after the gift of a general legacy, without other language indicating such an intent: *Chase v. Davis*, 65 Me. 102. A will directed that the debts should be paid by the executors, and then gave to testator's two sons all the real estate in equal moieties, "and also my personal estate, after paying the legacies hereinafter mentioned," and finally gave certain legacies; these legacies were not charged upon the real estate: *Gilder v. Gilder*, 1 Del. Ch. 331.

The rule is settled that if a charge on lands depends upon some contingency which fails, the charge thereby sinks for the benefit of whoever may be entitled to the principal estate; that is, such person takes the estate free from the charge: *Whitehead v. Thompson*, 79 N. C. 450.

suggested, according to which the question in each particular case depends upon the testator's whole property, as indicated by other clauses of his will, or as actually shown by extrinsic evidence of circumstances outside of the will.

§ 1248. **Observations upon the American Rules.**—In concluding the foregoing survey of this important subject, I would venture to express the conviction that the unwillingness of American judges to accept and apply these English doctrines seems to be remarkable and even inexplicable. The rules as established by the English equity, when carried out to their fullest extent, completely accord with the fundamental conceptions of our American jurisprudence concerning real property, with all the tendencies of our modern state legislation, and with the sentiments of our people in regard to landed ownership. The tendency of our legislation, the fundamental principles of our jurisprudence, and the sentiments of our landed proprietorship, all agree in breaking down the superiority of real over personal property, and in establishing the ownership of both upon a perfect equality. That English courts should formulate rules in such direct opposition to the feudal dogmas, and to the supremacy of land ownership, is perhaps remarkable; but it is certainly more strange that any American courts should refuse to adopt these rules which so fully express the conceptions and tendencies of our national civilization.

SECTION V.

THE GRANTOR'S LIEN ON CONVEYANCE.

ANALYSIS.

- §§ 1249-1254. The ordinary grantor's lien for unpaid purchase price.
- § 1249. General doctrine; in what states adopted or rejected; states classified in foot-notes.
- § 1250. Origin and *rationale*; Ahrend v. Odiorne, discussed.
- § 1251. Requisites, extent, and effects of this lien; great uncertainty and conflict in the results of judicial opinion.
- § 1252. How discharged or waived; effect of taking other security, etc.
- § 1253. Against whom the lien avails.
- § 1254. In favor of whom the lien avails; whether or not assignable.
- §§ 1255-1259. Grantor's lien by reservation.
- § 1255. General description.
- § 1256. What creates a lien by reservation.
- § 1257. Essential nature of the lien.
- § 1258. Its operation and effect.
- § 1259. The grantor's dealing with this lien; waiver; assignment.

§ 1249. **General Doctrine—In What States Adopted or Rejected.**—Although the grantor's and the vendor's lien are ordinarily treated of together by one and the same description and discussion, yet they are essentially different, producing different consequences, and governed in many important and practical respects by different rules. By presenting them separately, more accuracy and certainty will result, and much unnecessary confusion will, I think, be avoided.¹ It is a firmly established doctrine of the English equity, that the grantor of land, who has sold and conveyed and delivered possession to the grantee,

¹ The *grantor's* lien is purely equitable, exists only in the equitable jurisprudence, and is exclusively of equitable cognizance, the entire legal estate with the possession being vested in the grantee. The *vendor's* lien, on the other hand, is accompanied by the legal title and estate. Although in equity the vendee acquires the equitable estate, and the vendor is said to have a lien thereon, still the legal estate and title are remaining in

the vendor, and the vendee's estate is *only* equitable. Here is, at the outset, a fundamental difference between the position of the grantor and that of the vendor. This distinction runs through all the relations between these parties and third persons acquiring interest in or claims on the land. The method of regarding the two liens as one and the same has produced much unnecessary confusion and apparent conflict of decision.

as well as the vendor in a contract for the sale and purchase of land who has delivered possession to his vendee, retains an equitable lien upon the land for the unpaid purchase-money, although he has taken no distinct agreement or separate security for it, and even though the deed recites that the consideration has been fully paid.¹ The grantor's lien exists in the following states and territories: Alabama, Arkansas, California, Colorado, Dakota, District of Columbia, Florida, Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, Ohio, Oregon, Tennessee, Texas, Wisconsin.² In several of these commonwealths the lien

¹ *Mackreth v. Symmons*, 15 Ves. 329; 1 Lead. Cas. Eq., 4th Am. ed., 447; *Blackburn v. Gregson*, 1 Brown Ch. 420; *Smith v. Hibbard*, 2 Dick. 730; *Chapman v. Tanner*, 1 Vern. 267; *Austen v. Halsey*, 6 Ves. 475; *Smith v. Evans*, 28 Beav. 59; *Rose v. Watson*, 10 H. L. Cas. 672. [See also *Kettlewell v. Watson*, 21 Ch. Div. 685; *Callow v. Callow*, 42 Ch. Div. 550.] In the leading case of *Mackreth v. Symmons*, *supra*, Lord Eldon thus states the doctrine in his own peculiar dialect: "The settled doctrine is, that where the vendor conveys, without more, though the consideration is upon the face of the instrument expressed to be paid, and by a receipt indorsed upon the back, if it is the simple case of a conveyance, the money or part of it not being paid, as between the vendor and vendee and persons claiming as volunteers, upon the doctrine of this court, which, when it is settled, has the effect of contract, though perhaps no actual contract has taken place, a lien shall prevail; in the one case for the whole consideration, in the other for that part of the money which was not paid." As to the vendor's lien on a sale of chattels, see *Coman v. Lakey*, 80 N. Y. 345, 350, 351.

² *Alabama*: *Haley v. Bennett*, 5 Port. 452; *Roper v. McCook*, 7 Ala. 318; *Burns v. Taylor*, 23 Ala. 255; *Bradford v. Harper*, 25 Ala. 337; *Griffin v. Camack*, 36 Ala. 695; 76 Am. Dec. 344; *Dennis v. Williams*, 40 Ala. 633; *Wood v. Sullens*, 44 Ala. 686; *Gordon v. Bell*, 50 Ala. 213; *Flinn v.*

Barber, 61 Ala. 530; *Terry v. Keaton*, 58 Ala. 667; *Dugger v. Tayloe*, 60 Ala. 504; *Bryant v. Stephens*, 58 Ala. 636; *Moore v. Worthy*, 56 Ala. 163; *Simpson v. McAllister*, 56 Ala. 228; *Bizzell v. Nix*, 60 Ala. 281; 31 Am. Rep. 38; *Bankhead v. Owen*, 60 Ala. 457; *Thames v. Caldwell*, 60 Ala. 644; *Py-lant v. Reeves*, 53 Ala. 132; 25 Am. Rep. 605; *Barnett v. Riser's Ex'rs*, 63 Ala. 347; *Thurman v. Stoddard*, 63 Ala. 336; *Chapman v. Lee*, 64 Ala. 483; *Burgess v. Greene*, 64 Ala. 509; *Shorter v. Frazer*, 64 Ala. 74; *Carver v. Eads*, 65 Ala. 190; *Walker v. Carroll*, 65 Ala. 61. [See also *Ware v. Curry*, 67 Ala. 274; *Wilkinson v. May*, 69 Ala. 33; *McCarty v. Williams*, 69 Ala. 174; *Hooper v. Armstrong*, 69 Ala. 343; *Walker v. Struve*, 70 Ala. 167; *Tedder v. Steele*, 70 Ala. 347; *Donegan's Adm'r v. Hentz*, 70 Ala. 437; *Prickett v. Sibert*, 71 Ala. 194; *Stringfellow v. Ivie*, 73 Ala. 209; *Preston v. Ellington*, 74 Ala. 133; *Williams v. McCarty*, 74 Ala. 295; *Dickerson v. Carroll*, 76 Ala. 377; *McDonald v. Elyton Land Co.*, 78 Ala. 382; *Kelly v. Karsner*, 81 Ala. 500; *Betts v. Sykes*, 82 Ala. 378; *Crampton v. Prince*, 83 Ala. 246; 3 Am. St. Rep. 718; *Chapman v. Peebles*, 84 Ala. 283; *Woodall v. Kelly*, 85 Ala. 368; 7 Am. St. Rep. 57; *Jackson v. Stanley*, 87 Ala. 270; *Weaver v. Brown*, 87 Ala. 533; *Davis v. Smith*, 88 Ala. 596; *Jones v. Lockard*, 89 Ala. 575.]

Arkansas: *English v. Russell*, *Hemp*, 35; *Scott v. Orbison*, 21 Ark. 202; *Shall v. Biscoe*, 18 Ark. 142; *Harris v. Hanks*, 25 Ark. 510, 517;

has been recognized by statute; and in a few of them, it seems, under a somewhat modified form, to be the ordi-

Refeld v. Ferrell, 27 Ark. 534; *Campbell v. Rankin*, 28 Ark. 401; *Turner v. Horner*, 29 Ark. 440; *Lavender v. Abbott*, 30 Ark. 172; *Neal v. Speigle*, 33 Ark. 63; *Mayes v. Hendry*, 33 Ark. 240; *Swan v. Benson*, 31 Ark. 728; *Blevins v. Rogers*, 32 Ark. 258; *Johnson v. Nunnerly*, 30 Ark. 153; *Linthicum v. Tapscott*, 28 Ark. 267; *Holman v. Patterson's Heirs*, 29 Ark. 357; *Stroud v. Pace*, 35 Ark. 100; *Young v. Harris*, 36 Ark. 162; *Harris v. Hanie*, 37 Ark. 348. [See also *Martin v. O'Bannon*, 35 Ark. 62; *Young v. Harris*, 36 Ark. 162; *Harris v. Hanie*, 37 Ark. 348; *Chapman v. Liggett*, 41 Ark. 292; *Waddell v. Carlock*, 41 Ark. 523; *Rodman v. Sanders*, 44 Ark. 504; *Springfield etc. R. R. Co. v. Stewart*, 51 Ark. 285.]

California: Civ. Code, sec. 3046; *Truebody v. Jacobson*, 2 Cal. 269; *Cahoon v. Robinson*, 6 Cal. 225; *Walker v. Sedgwick*, 8 Cal. 398; *Sparks v. Hess*, 15 Cal. 186; *Williams v. Young*, 17 Cal. 403; *Taylor v. McKinney*, 20 Cal. 618; *Baum v. Grigsby*, 21 Cal. 172; 81 Am. Dec. 153; *Burt v. Wilson*, 28 Cal. 632; 87 Am. Dec. 142; *Galagher v. Mars*, 50 Cal. 23; *Wells v. Harter*, 53 Cal. 342. [See also *Fitzell v. Leaky*, 72 Cal. 477; *Bancroft v. Cosby*, 74 Cal. 583; *Avery v. Clark*, 87 Cal. 619; 22 Am. St. Rep. 272; *Gessner v. Palmateer*, 89 Cal. 89.]

Colorado: *Francis v. Wells*, 2 Col. 660.

Dakota: Civ. Code, sec. 1801.

District of Columbia: *Ford v. Smith*, 1 McAr. 592.

Florida: *Bradford v. Marvin*, 2 Fla. 463; *Woods v. Bailey*, 3 Fla. 41.

Illinois: *Dyer v. Martin*, 4 Scam. 146; *Trustees v. Wright*, 11 Ill. 603; *Keith v. Horner*, 32 Ill. 524; *McLaurie v. Thomas*, 39 Ill. 291; *Boyn-ton v. Champlin*, 42 Ill. 57; *Wilson v. Lyon*, 51 Ill. 166; *Kirkham v. Boston*, 67 Ill. 599; *Wing v. Goodman*, 75 Ill. 159; *Moshier v. Meek*, 80 Ill. 79; *Andrus v. Coleman*, 82 Ill. 26; 25 Am. Rep. 289; *Henson v. Westcott*, 82 Ill. 224; *Small v. Stagg*, 95 Ill. 39; *Manning v. Frazier*, 96 Ill. 279. [See also *Ryhlner v. Frank*, 105 Ill. 326; *Chicago etc. Land Co. v. Peck*, 112 Ill. 403, 451; *Sidwell v. Wheaton*, 114 Ill.

267; *Beal v. Harrington*, 116 Ill. 113; *Strong v. Strong*, 126 Ill. 301; *Gruhn v. Richardson*, 128 Ill. 178.]

Indiana: *Lagow v. Badollet*, 1 Blackf. 416; 12 Am. Dec. 258; *Evans v. Goodlet*, 1 Blackf. 246; *Deibler v. Barwick*, 4 Blackf. 339; *McCarty v. Pruett*, 4 Ind. 226; *Merritt v. Wells*, 18 Ind. 171; *Mattix v. Weand*, 19 Ind. 151; *Cox's Adm'r v. Wood*, 20 Ind. 54; *Yaryan v. Shriner*, 26 Ind. 364; *Anderson v. Donnell*, 66 Ind. 150; *Haskell v. Scott*, 56 Ind. 564; *Fouch v. Wilson*, 60 Ind. 64; 28 Am. Rep. 651; *Nichols v. Glover*, 41 Ind. 24; *Martin v. Cauble*, 72 Ind. 67; *Higgins v. Kendall*, 73 Ind. 522; *Richards v. McPherson*, 74 Ind. 158. [See also *McClellan v. Coffin*, 93 Ind. 456; *Barrett v. Lewis*, 106 Ind. 120; *Otis v. Gregory*, 111 Ind. 504; *Yetter v. Fitts*, 113 Ind. 34; *Strohm v. Good*, 113 Ind. 93; *Brower v. Witmeyer*, 121 Ind. 83.]

Iowa: *Peirson v. David*, 1 Iowa, 23; *Grapengether v. Fejervary*, 9 Iowa, 163; 74 Am. Dec. 336; *Hays v. Horine*, 12 Iowa, 61; 79 Am. Dec. 518; *Rakestraw v. Hamilton*, 14 Iowa, 147; *Patterson v. Linder*, 14 Iowa, 414; *Tupples v. Viers*, 14 Iowa, 515; *Poler v. Dubuque*, 20 Iowa, 440; *McDole v. Purdy*, 23 Iowa, 277; *Johnson v. McGrew*, 42 Iowa, 555. [See also *Kendrick v. Eggleston*, 56 Iowa, 128; 41 Am. Rep. 90; *Gnash v. George*, 58 Iowa, 492; *Webster v. McCollough*, 61 Iowa, 496; *Cutler v. Ammon*, 65 Iowa, 231; *Erickson v. Smith*, 79 Iowa, 374;] *Rev. Laws 1860*, p. 653; but by the Code of 1873, sec. 1940, the lien must be reserved in the deed to the grantee, in order to avail against his conveyance: *Tinsley v. Tinsley*, 52 Iowa, 14; *Stuart v. Harrison*, 52 Iowa, 511; *Allen v. Loring*, 34 Iowa, 499; *Escher v. Simmons*, 54 Iowa, 269. [See also *Dean v. Scott*, 67 Iowa, 233; *Prouty v. Clark*, 73 Iowa, 55; *Chrisman v. Hay*, 43 Fed. Rep. 552.]

Kentucky: *Fowler v. Heirs of Rust*, 2 A. K. Marsh. 294; *Thornton v. Knox's Ex'r*, 6 B. Mon. 74; *Muir v. Cross*, 10 B. Mon. 277; *Gritton v. Thurman*, 14 B. Mon. 224; *Gritton v. McDonald*, 3 Met. (Ky.) 252; *Burrus v. Roulhac's Adm'r*, 2 Bush, 39; *Maupin v. McCormick*, 2 Bush, 206; *Ledford v. Smith*, 6 Bush,

nary mode of securing payment in conveyances of land on credit. In the remaining states of the Union, the doctrine

129; *Emison v. Risque*, 9 Bush, 24. The lien has been somewhat limited by statute as against *bona fide* purchasers from and creditors of the grantee; Gen. Stats. 1873, p. 589; [c. 63, sec. 24;] *Phillips v. Skinner*, 6 Bush, 662. [See also *Brown v. Ferrell*, 83 Ky. 417.]

Maryland: *Moreton v. Harrison*, 1 Bland, 491; *Iglehart v. Armiger*, 1 Bland, 519; *Ringgold v. Bryan*, 3 Md. Ch. 488; *White v. Casenave's Heirs*, 1 Har. & J. 106; *Ghiselin v. Ferguson*, 4 Har. & J. 522; *Pratt v. Vanwyck's Ex'rs*, 6 Gill & J. 495; *Magruder v. Peter*, 11 Gill & J. 217; *Repp v. Repp*, 12 Gill & J. 341; *Carr v. Hobbs*, 11 Md. 285; *Hummer v. Schott*, 21 Md. 307; *Hall v. Jones*, 21 Md. 439; *Bratt v. Bratt*, 21 Md. 578; *Carrico v. Farmers' etc. Bank*, 33 Md. 235; Gen. Laws, art. 16, sec. 130; Rev. Code 1878, art. 66, sec. 5; [Pub. Gen. Laws 1888, art. 16, sec. 193. See also *Dance v. Dance*, 56 Md. 433; *Thompson v. Corrie*, 57 Md. 197; *Christopher v. Christopher*, 64 Md. 583; *Baltimore and Liberty Turnpike Co. v. Moale*, 71 Md. 353.]

Michigan: *Carroll v. Van Rensselaer*, Harr. (Mich.) 225; *Sears v. Smith*, 2 Mich. 243; *Converse v. Blumrich*, 14 Mich. 109; 90 Am. Dec. 230; *Payne v. Avery*, 21 Mich. 524; *Merrill v. Allen*, 38 Mich. 487; *Palmer v. Sterling*, 41 Mich. 218; *Clark v. Stilson*, 36 Mich. 482; *Hiscock v. Norton*, 42 Mich. 320; *Brown v. Porter*, 2 Mich. N. P. 12. [See also *Ortmann v. Plummer*, 52 Mich. 76; *Dunton v. Out-house*, 64 Mich. 419; *Waterfield v. Wilber*, 64 Mich. 642; *Richards v. Shingle etc. Co.*, 74 Mich. 57.]

Minnesota: *Selby v. Stanley*, 4 Minn. 65; *Daughaday v. Paine*, 6 Minn. 443; *Duke v. Balme*, 16 Minn. 306; *Dawson v. Girard L. Ins. Co.*, 27 Minn. 411. [See also *Hammond v. Peyton*, 34 Minn. 529; *Peters v. Tunell*, 43 Minn. 473; 19 Am. St. Rep. 252.]

Mississippi: *Stewart v. Ives*, 1 Smedes & M. 197; *Tanner v. Hicks*, 4 Smedes & M. 294; *Dunlap v. Burnett*, 5 Smedes & M. 702; 45 Am. Dec. 269; *Upshaw v. Hargrove*, 6 Smedes & M. 286; *Trotter v. Erwin*, 27 Miss. 772; *Servis v. Beatty*, 32 Miss. 52; *Little-*

john v. Gordon, 32 Miss. 235; *Richardson v. Bowman*, 40 Miss. 782; *Harvey v. Kelly*, 41 Miss. 490; 93 Am. Dec. 267; *Russell v. Watt*, 41 Miss. 602; 93 Am. Dec. 270; *Dodge v. Evans*, 43 Miss. 570; *Pitts v. Parker*, 44 Miss. 247; *Rutland v. Brister*, 53 Miss. 683; *Perkins v. Gibson*, 51 Miss. 699; 24 Am. Rep. 644; *Tucker v. Hadley*, 52 Miss. 414; *McLain v. Thompson*, 52 Miss. 418; *Walton v. Hargroves*, 42 Miss. 18; 97 Am. Dec. 429; *Lindsey v. Bates*, 42 Miss. 397. [See also *Parker v. McBee*, 61 Miss. 134; *Cummings v. Moore*, 61 Miss. 184; *Louisiana Nat. Bank v. Knapp*, 61 Miss. 485; *Tate v. Bush*, 62 Miss. 145; *Lissa v. Posey*, 64 Miss. 352.]

Missouri: *McKnight v. Brady*, 2 Mo. 110; *Marsh v. Turner*, 4 Mo. 253; *Delassus v. Poston*, 19 Mo. 425; *Davis v. Lamb*, 30 Mo. 441; *Bledsoe v. Games*, 30 Mo. 448; *Pratt v. Clark*, 57 Mo. 189; *Stevens v. Rainwater*, 4 Mo. App. 292; *Davenport v. Murray*, 68 Mo. 198; *Pearl v. Hervey*, 70 Mo. 160. [See also *Orrick v. Durham*, 79 Mo. 174; *Bennett v. Shipley*, 82 Mo. 448; *Zoll v. Carnahan*, 83 Mo. 35; *Bronson v. Wanzer*, 86 Mo. 408; *Christy v. McKee*, 94 Mo. 241; *Green v. Betts*, 1 Fed. Rep. 239.]

New Jersey: *Vandoren v. Todd*, 3 N. J. Eq. 397; *Brinkerhoff v. Vansciven*, 4 N. J. Eq. 251; *Herbert v. Scofield*, 9 N. J. Eq. 492; *Dudley v. Matlack*, 14 N. J. Eq. 252; *Armstrong v. Ross*, 20 N. J. Eq. 109; *Corlies v. Howland*, 26 N. J. Eq. 311; *Graves v. Coutant*, 31 N. J. Eq. 763; *Ogden v. Thornton*, 30 N. J. Eq. 569. [See also *Porter v. Woodruff*, 36 N. J. Eq. 174; *Butterfield v. Okie*, 36 N. J. Eq. 482; *Acton v. Waddington*, 46 N. J. Eq. 16.]

New York: *Champion v. Brown*, 6 Johns. Ch. 398, 402; 10 Am. Dec. 343; *Garson v. Green*, 1 Johns. Ch. 303; *Stafford v. Van Rensselaer*, 9 Cow. 316; *White v. Williams*, 1 Paige, 502; *Fish v. Howland*, 1 Paige, 20; *Warner v. Van Alstyne*, 3 Paige, 513; *Shirley v. Sugar Ref. Co.*, 2 Edw. Ch. 505; *Warren v. Fenn*, 28 Barb. 333; *Dubois v. Hull*, 43 Barb. 26; *Smith v. Smith*, 9 Abb. Pr., N. S., 420; *Chase v. Peck*, 21 N. Y. 581; *Hazeltine v.*

has either been condemned by the courts, or after having been judicially accepted, has been abrogated by statute, or the question as to its existence does not seem to have been finally determined. The following states belong to this class, in which the lien does not exist, either because rejected or not adopted by the courts, or abolished by statutes: Connecticut, Delaware, Georgia, Kansas, Maine, Massachusetts, Nebraska, New Hampshire, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia.¹

Moore, 21 Hun, 355; Lamberton v. Van Voorhis, 15 Hun, 336; Gaylord v. Knapp, 15 Hun, 87.

Ohio: Tiernan v. Beam, 2 Ohio, 383; 15 Am. Dec. 557; Williams v. Roberts, 5 Ohio, 35; Brush v. Kinsley, 14 Ohio, 20; Mayham v. Coombs, 14 Ohio, 428; Neil v. Kinney, 11 Ohio St. 58; Anketel v. Converse, 17 Ohio St. 11; 91 Am. Dec. 115; Whetsel v. Roberts, 31 Ohio St. 503.

Oregon: Pease v. Kelly, 3 Or. 417. [The existence of the lien in Oregon was doubted in Kelly v. Ruble, 11 Or. 75, but was recognized in Gee v. McMillan, 14 Or. 268; 58 Am. Rep. 315; Coos Bay W. Co. v. Crocker, 4 Fed. Rep. 577, 6 Saw. 574; First Nat. Bank of Salem v. Salem C. F. M. Co., 39 Fed. Rep. 89.]

Tennessee: Eskridge v. McClure, 2 Yerg. 84; Ross v. Whitson, 6 Yerg. 50; Campbell v. Baldwin, 2 Humph. 248; Marshall v. Christmas, 3 Humph. 616; 39 Am. Dec. 199; Uzzell v. Mack, 4 Humph. 319; 40 Am. Dec. 648; Medley v. Davis, 5 Humph. 387; Norvell v. Johnson, 5 Humph. 489; Taylor v. Hunter, 5 Humph. 569; Brown v. Vannier, 7 Humph. 239; Ellis v. Temple, 4 Cold. 315; 94 Am. Dec. 200; Choate v. Tighe, 10 Heisk. 621; Durant v. Davis, 10 Heisk. 522; Irvine v. Muse, 10 Heisk. 477; Russell v. Dodson, 6 Baxt. 16; [Cate v. Cate, 87 Tenn. 41.]

Texas: Briscoe v. Bronaugh, 1 Tex. 326; 46 Am. Dec. 103; Pinchain v. Colard, 13 Tex. 333; Glasscock v. Glasscock's Adm'r, 17 Tex. 480; Wheeler v. Love, 21 Tex. 583; McAlpine v. Burnett, 23 Tex. 649; Burford v. Rosenfield, 37 Tex. 42; White v. Downs, 40 Tex. 225; Yarborough v. Wood, 42 Tex. 91; 19 Am. Rep. 44; Robinson v. Mc-

Whirter, 52 Tex. 201; Baker v. Comp-ton, 52 Tex. 252; Dibrell v. Smith, 49 Tex. 474; Burgess v. Millican, 50 Tex. 397; Ball v. Hill, 48 Tex. 634; Irvin v. Garner, 50 Tex. 48; Wasson v. Davis, 34 Tex. 159; De Bruhl v. Maas, 54 Tex. 464; Waldrom v. Zacharie, 54 Tex. 503. [See also Salmon v. Downs, 55 Tex. 243; Hunt v. Makemson, 56 Tex. 9; Thorn v. Dill, 56 Tex. 145; Wooters v. Hollingsworth, 58 Tex. 374; Senter v. Lambeth, 59 Tex. 259; Bailey v. Tindall, 59 Tex. 540; Porterfield v. Taylor, 60 Tex. 264; Slaughter v. Owens, 60 Tex. 668; Russell v. Kirkbride, 62 Tex. 455; Houston v. Dixon, 66 Tex. 79; Bynum v. Preston, 69 Tex. 287; 5 Am. St. Rep. 49; Hamblen v. Folts, 70 Tex. 136; Ballard v. Carter, 71 Tex. 161; Howe v. Harding, 76 Tex. 17; 18 Am. St. Rep. 17; Oury v. Saunders, 77 Tex. 278; Johnson v. Townsend, 77 Tex. 639.]

Wisconsin: Tobey v. McAllister, 9 Wis. 463; Willard v. Reas, 26 Wis. 540; Madden v. Barnes, 45 Wis. 135; 30 Am. Rep. 703; De Forest v. Holum, 38 Wis. 516. [See also Carey v. Boyle, 53 Wis. 574; 56 Wis. 145; Evans v. Enloe, 70 Wis. 345.]

Rhode Island. — A recent decision in Rhode Island recognizes and enforces the lien, at least under the circumstances of the case: Kent v. Gerhard, 12 R. I. 92; 34 Am. Rep. 612.

¹*Connecticut*. — Not adopted; leaning of the courts strongly against it; but the question not perhaps finally settled: Watson v. Wells, 5 Conn. 468; Dean v. Dean, 6 Conn. 285; Meigs v. Dimock, 6 Conn. 458, 464; Atwood v. Vincent, 17 Conn. 575; Chapman v. Beardsley, 31 Conn. 115.

Delaware. — Not adopted; question

§ 1250. **Origin and Rationale.** — With regard to the origin and *rationale* of the grantor's lien, there has been a great diversity of opinion. It has been accounted for

still left open: *Budd v. Busti*, 1 Harr. (Del.) 69. [See also *Rice v. Rice* 36 Fed. Rep. 860.]

Georgia. — Abolished by statute: Code 1882, sec. 1997; *Jones v. Janes*, 56 Ga. 325; but see *Drinkwater v. Moreman*, 61 Ga. 395. Former decisions had established it: *Mims v. Macon* etc. R. R., 3 Ga. 333; *Mounce v. Byars*, 16 Ga. 469; *Mims v. Lockett*, 23 Ga. 237; 68 Am. Dec. 521; *Chance v. McWhorter*, 26 Ga. 315; *Still v. Mayor* etc., 27 Ga. 502, 504.

Kansas. — Existence denied: *Simpson v. Mundee*, 3 Kan. 172; *Brown v. Simpson*, 4 Kan. 76; *Smith v. Rowland*, 13 Kan. 245; *Green v. Barnard*, 18 Kan. 518.

Maine. — Entirely rejected: *Philbrook v. Delano*, 29 Me. 410, 415; *Gilman v. Brown*, 1 Mason, 191, 210.

Massachusetts. — Entirely rejected: *Ahrend v. Odiorne*, 118 Mass. 261; 19 Am. Rep. 449; *Gilman v. Brown*, *supra*.

Nebraska. — Rejected: *Edminster v. Higgins*, 6 Neb. 265.

New Hampshire. — Not adopted; its existence questioned: *Buntin v. French*, 16 N. H. 592; *Arlin v. Brown*, 44 N. H. 102.

North Carolina. — Held not to exist; but sustained by earlier cases: *McGhee v. Sneed*, 1 Dev. & B. Eq. 333; *Womble v. Battle*, 3 Ired. Eq. 182; *Henderson v. Burton's Ex'r*, 3 Ired. Eq. 259; *Cameron v. Mason*, 7 Ired. Eq. 180. See *Mast v. Raper*, 81 N. C. 330; *McKay v. Gilliam*, 65 N. C. 130; [see also *Moore v. Ingram*, 91 N. C. 376; *White v. Jones*, 92 N. C. 388; *Peck v. Culberson*, 104 N. C. 426.]

Pennsylvania. — Does not exist under its ordinary form: *Kauffelt v. Bower*, 7 Serg. & R. 64; 10 Am. Dec. 428. *Semple v. Burd*, 7 Serg. & R. 286; *Megargel v. Saul*, 3 Whart. 19; *Bear v. Whisler*, 7 Watts, 144, 147; *Cook v. Trimble*, 9 Watts, 15; *Hepburn v. Snyder*, 3 Pa. St. 72; *Springer v. Walters*, 34 Pa. St. 328; *Stephens's Ex'rs' Appeal*, 38 Pa. St. 9; *Hiester v. Green*, 48 Pa. St. 96; 86 Am. Dec. 569; *Heist v. Baker*, 49 Pa. St. 9; *Strauss's Appeal*, 49 Pa. St. 353; but a lien may be created by an express and appropriate

provision in the deed: *Heist v. Baker*, *supra*.

Rhode Island. — Not adopted; its existence questioned: *Perry v. Grant*, 10 R. I. 334; but in the recent case of *Kent v. Gerhard*, 12 R. I. 92, 34 Am. Rep. 612, the lien is admitted and enforced under the facts of the case.

South Carolina. — Does not exist: *Wragg v. Comptroller-General*, 2 De-saus. Eq. 509, 520.

Vermont. — Abolished by statute: Laws 1851, c. 47; Gen. Stats. 1862, c. 65, sec. 33; had been approved in *Manly v. Slason*, 21 Vt. 271; 52 Am. Dec. 60, per Redfield, C. J.

Virginia. — Abrogated by statute, unless expressly reserved in the deed: Code 1873, c. 115, sec. 1; *Yancey v. Mauck*, 15 Gratt. 300; prior decisions had adopted it: *Cole v. Scot*, 2 Wash. 141; *Tompkins v. Mitchell*, 2 Rand. 428; *Redford v. Gibson*, 12 Leigh, 332; *Kyles v. Tait's Adm'r*, 6 Gratt. 44.

West Virginia. — Abrogated, unless expressly reserved in the deed: Code 1870, c. 75, sec. 1; *Hempfield R. R. v. Thornburg*, 1 W. Va. 261. [See also *Poe v. Paxton*, 26 W. Va. 607; *McNeil v. Miller*, 29 W. Va. 480.]

United States. — Courts of the United States have recognized and enforced the lien, but in this, as in all other questions of real-property law, they follow the doctrines established in the particular state where the land is situated and the controversy arises: *Gilman v. Brown*, 1 Mason, 191; 4 Wheat. 255; *Bayley v. Greenleaf*, 7 Wheat. 46; *McLearn v. Wallace*, 10 Pet. 625, 640; *Galloway v. Finley*, 12 Pet. 264; *Bush v. Marshall*, 6 How. 284; *Chilton v. Braiden's Adm'r*, 2 Black, 458; *Cordova v. Hood*, 17 Wall. 1, 5. [See also *Green v. Betts*, 1 Fed. Rep. 289; *Coos Bay Wagon Co. v. Crocker*, 6 Saw. 574; 4 Fed. Rep. 577; *First Nat. Bank of Salem v. Salem C. F. M. Co.*, 39 Fed. Rep. 89. It will not be enforced by federal courts in any state, unless it has been previously adopted by the state laws, or is recognized by the courts of the state in which the land sought to be charged is situated: *Rice v. Rice*, 36 Fed. Rep. 860.]

as a trust; as an equitable mortgage; as arising from a natural equity; and as a contrivance of the chancellors to evade the unjust rule of the early common law by which land was free from the claims of simple contract creditors.¹ Notwithstanding all these differing theories, as

¹ The commonly received opinion regards the lien as wholly referable to the doctrine of trusts, and as constituting a species of constructive trusts: *Blackburn v. Gregson*, 1 Brown Ch. 420, per Lord Loughborough; *Mackreth v. Symmons*, 15 Ves. 329, per Lord Eldon; *Ringgold v. Bryan*, 3 Md. Ch. 488; *Moreton v. Harrison*, 1 Bland, 491; *Iglehart v. Armiger*, 1 Bland, 519, 524, 525; 2 Story's Eq. Jur., secs. 1218 et seq.; *Snell's Equity*, 5th ed., 136; *Perry on Trusts*, secs. 231, 232. Notwithstanding the array of authority in support of this opinion, it is the one, as it seems to me, having the least foundation of fact, of principle, or of analogy. It is an instance of the tendency, frequently mentioned in previous chapters, to refer all equitable rights and interests to the doctrine of trusts, — a tendency which has produced much unnecessary confusion throughout the whole domain of equity jurisprudence. There is, in fact, not a single element really in common between this or any other equitable lien and a trust: See remarks *ante*, at the commencement of the present chapter, §§ 1233, 1234. Some writers and judges have considered the lien to be a species of equitable mortgage; but this is merely to give it another name, and not to explain its origin: See *Wilson v. Davisson*, 2 Rob. (Va.) 384, 404; *Adams's Equity*, 127. It has also, with much more reason, been said to arise from a natural equity that the land shall be charged with the unpaid purchase-money: *Chapman v. Tanner*, 1 Vern. 267; *Warren v. Fenn*, 28 Barb. 333, per Potter, J. Finally, all of these theories have been rejected, and the existence of the lien has been ascribed to the fact that, by the common law, land was free from the claims of simple contract creditors, and that it was invented by the chancellors from a desire to evade this unjust rule, and to give the grantor a security for his unpaid purchase-money. In the quite

recent case of *Ahrend v. Odiorne*, 118 Mass. 261, 266, 19 Am. Rep. 449, Mr. Chief Justice Gray, as the result of an elaborate examination, maintains this view. He rejects the theory of natural equity, because that would apply to a sale of chattels as well as of land, and the theory of a trust, because, if true, that would include too many other cases to which confessedly the doctrine had not been extended, and reaches the following conclusions: "The most plausible foundation of the English doctrine would seem to be: that justice required that the vendor [grantor] should be enabled, by some form of judicial process, to charge the land in the hands of the vendee [grantee] as security for the unpaid purchase-money. And the restriction of the doctrine to real estate suggest, the inference that the court of chancery was induced to interpose by the consideration that, by the law of England, real estate could neither be attached on mesne process, nor, except in certain cases, or to a limited extent, be taken in execution for debt." The American editors of the *Leading Cases in Equity* reach a somewhat similar conclusion: 4th Am. ed., 500. Rejecting the theory of a mortgage because there is no semblance of a contract for a security on the land, and that of a trust because a constructive trust cannot arise from a mere breach of contract to pay, without any element of fraud, they say: "The true nature of the claim appears to be this: It had its origin in a country where lands were not liable, both during and after the life of the debtor, for all personal obligations, including debts by simple contract; and it seems to be an original and natural equity that the creditor, whose debt was the consideration of the land, should, by virtue of that consideration, be allowed to charge the land upon a failure of the personal assets." The force of Mr. Justice Gray's argument is very much weak-

illustrated by the quotations in the foot-notes, the original and true ground of this lien appears to me very simple and obvious. It is clearly one of the many instances to be found in the early English jurisprudence, whether legal or equitable, of the higher importance, consideration, and value given to real than to personal property. It is a most natural judicial conception that upon the sale of *any* thing on credit, the very identical thing sold should be regarded in some sort as a special fund out of which payment of the price was to be obtained, or at least secured, and that the seller should not be considered as parting *absolutely* with his whole interest and dominion until the price was fully paid. This natural conception would undoubtedly have manifested itself in a universal rule, applicable to the sales of all things, had not other considerations and motives of policy prevented. Such considerations and motives did interfere and prevail in the case of chattels and all personal property. The interests of trade and commerce required that the transmission of these things should be free, and that ownership should go or appear to go with possession. These reasons, joined with the comparatively slight importance given to the ownership of personal property resulting from feudal institutions, prevented the application of the principle to the sale of chattels and things in action, in the same manner as, at a later day, the same reasons were applied with even greater force to the transfer of negotiable instruments. Land, however, not being looked upon as a subject of commerce, being closely associated with family interests and social distinction, its free transmission not being considered as essential, and its ownership being highly favored and surrounded with sentiments

ened, even if not destroyed, by the fact that the lien does, under some circumstances, extend to a sale of chattels. The reason why it has not generally been applied to chattels must be found in considerations of convenience and expediency. The explanation suggested in the foregoing

quotations is, in my opinion, altogether too narrow and partial as a *rationale* of the entire doctrine, although the common-law mode of dealing with land may have entered as one element into the motives operating upon the minds of the chancellors.

of peculiar feudal honor, it was inevitable that the natural principle which I have described should have been allowed its full force and effect upon the sale of real estate. Its ownership being so high and almost sacred a right, the proprietor selling on credit was not considered as parting with every interest or dominion over the particular tract, although he had delivered possession, until he had received full payment of the price which had been agreed upon *as a substitute* for the land itself. As the common-law rules furnished no means for working out this idea, it was both natural and inevitable that equity should make the conception practical under the familiar form of an equitable lien.¹ In later times, the equity judges, attempting to give some explanation of the doctrine, invented the theories of trust, mortgage, and the like. The correctness of this *rationale* further appears from the fact that under some circumstances the lien has been extended by modern judges to sales of personal property.

§ 1251. **Requisites, Extent, and Effect of This Lien — Uncertain and Conflicting Results of Judicial Opinion.** — The grantor's lien, wherever recognized, is only permitted as a security for the unpaid purchase price, and not for any other indebtedness nor liability. There must be a certain, ascertained, absolute debt owing for the purchase price; the lien does not exist in behalf of any uncertain,

¹ It is evident from the foregoing account that the theory of trust is utterly without foundation, while that lately advanced by the Massachusetts court is imperfect and unsatisfactory, — substituting, in fact, an effect for a cause. The absence of any power at the common law to make land liable for ordinary debts, instead of being the source of the grantor's lien, was itself only another instance and consequence of the same general superiority given to the ownership of land; both were incidents of one common mode of treating real estate as compared with personal. I venture the

opinion that it is also obvious from the explanation of the text that the original grounds and reasons for admitting the grantor's lien do not exist in our own country, and the lien itself is not in harmony with our general real-property law. The tendency both of our legislation and of our social customs is to make land a subject of commerce, and its transmission as free as possible; while the rights of grantors can be fully protected by mortgages which, in nearly all the states, are widely different from the instrument bearing the same name in England.

contingent, or unliquidated demand.¹ No other single topic belonging to the equity jurisprudence has occasioned such a diversity and even discord of opinion among the American courts as this of the grantor's lien. Upon nearly every question that has arisen as to its operation, its waiver or discharge, the parties against whom it avails, and the parties in whose favor it exists, the decisions in different states, and sometimes even in the same state, are directly conflicting. It is practically impossible to formulate any general rules representing

¹ Harris v. Hanie, 37 Ark. 348; Toombs v. Con. Poe Min. Co., 15 Nev. 444; Hiscock v. Norton, 42 Mich. 320; Young v. Harris, 36 Ark. 162 (when allowed for personal services); De Forest v. Holum, 38 Wis. 516 (if future contingency happens); Clark v. Stilson, 36 Mich. 482; Palmer v. Sterling, 41 Mich. 218; Sears v. Smith, 2 Mich. 243; Payne v. Avery, 21 Mich. 524; Vandoren v. Todd, 3 N. J. Eq. 397; Patterson v. Edwards, 29 Miss. 67; [McDonald v. Elyton Land Co., 78 Ala. 352 (agreement to erect building on the land creates no lien); Ortman v. Plummer, 52 Mich. 76; Stringfellow v. Ivie, 73 Ala. 209 (gross sale of real and personal property; presumption against the lien); Wilkinson v. Parmer, 82 Ala. 367 (same); Alexander v. Hooks, 84 Ala. 605 (same); Peters v. Tunell, 43 Minn. 473; 19 Am. St. Rep. 252 (same); see, however, Cole v. Smith, 24 W. Va. 287. In general: Betts v. Sykes, 82 Ala. 378; Harris v. Harris, 37 Ark. 348; Waterfield v. Wilbur, 64 Mich. 642; Ortman v. Plummer, 52 Mich. 76 (where the purchase price of one parcel of land is so blended in a mortgage with that of another that it cannot be separated, no lien beyond the mortgage can be enforced); as, for example, an agreement to assume a debt or encumbrance: Lea v. Fabbri, 13 Jones & S. 361; Chapman v. Beardsley, 31 Conn. 115. [See, however, Woodall v. Kelly, 85 Ala. 368; 7 Am. St. Rep. 57; Williams v. Crow, 84 Mo. 298;] or an agreement to support the grantor for life: Chase v. Peck, 21 N. Y. 581; McKillip v. McKillip, 8 Barb. 552; Arlin v. Brown, 44 N. H. 102; Brawley v. Catron, 8 Leigh, 522. [See also Peters v. Tunell, 43 Minn. 473; 19 Am. St. Rep. 252.] With respect to the lien arising on an exchange of lands, see Drinkwater v. Moreman, 61 Ga. 395; Bryant v. Stephens, 58 Ala. 636; Pratt v. Clark, 57 Mo. 189; Dawson v. Girard Life Ins. Co., 27 Minn. 411; McDole v. Purdy, 23 Iowa, 277; Coit v. Fougere, 36 Barb. 195; Hare v. Van Deusen, 32 Barb. 92. [See also Louisiana Nat. Bank v. Knapp, 61 Miss. 485; Betts v. Sykes, 82 Ala. 378; Beal v. Harrington, 116 Ill. 113; Bennett v. Shipley, 82 Mo. 448.] On conveyances to married women, see Haskell v. Scott, 56 Ind. 564; Moore v. Worthy, 56 Ala. 163; Davenport v. Murray, 68 Mo. 198; McLain v. Thompson, 52 Miss. 418; Pylant v. Reeves, 53 Ala. 132; 25 Am. Rep. 605; Carver v. Eads, 65 Ala. 190; Martin v. Cauble, 72 Ind. 67. [See also Crampton v. Prince, 83 Ala. 246; 3 Am. St. Rep. 718; Jackson v. Rutledge, 3 Lea, 626; 31 Am. Rep. 655; Ogle v. Ogle, 41 Ohio St. 359.] For special circumstances under which the lien has been held to exist, see Manning v. Frazier, 96 Ill. 279 (on minerals); Perkins v. Gibson, 51 Miss. 699; 24 Am. Rep. 644; Rutland v. Brister, 53 Miss. 683; Merrill v. Allen, 38 Mich. 457 (from fraud); [Howe v. Harding, 76 Tex. 17; 18 Am. St. Rep. 17 (on grant of right of way). That the lien may arise on the sale of an equitable as well as of a legal interest or title: Ortman v. Plummer, 52 Mich. 76, per Campbell, J.; Carey v. Boyle, 53 Wis. 574; 56 Wis. 145; Fleece v. O'Rear, 83 Ind. 200; Dwenger v. Branigan, 95 Ind. 221; Poe v. Paxton, 26 W. Va. 607.]

the doctrine as established throughout the whole country.¹ The subjects to be considered in the further treatment are: 1. When the lien is discharged or waived; 2. Against whom it avails; and 3. In favor of whom it avails.

§ 1252. **How Discharged or Waived.**—It is a generally settled rule that the lien, if otherwise existing, is not waived or destroyed by the grantor's giving a receipt in full for the purchase price, or by a recital to that effect in the deed, nor by the grantee's giving his own personal security—his bond, note, bill—for the price.² If, how-

¹ The decisions of each state court must be separately examined, in order to obtain any accurate results; and for this reason I have collected and arranged the most important cases according to the order of the states in preceding notes. In *Fisk v. Potter*, 2 Abb. App. 138, 2 Keyes, 64, Mr. Justice Potter described the lien as follows, and his description is not overdrawn: "Its existence depends upon and is controlled by no well-settled rules; but on the contrary, the existence of the lien is generally made to depend upon the peculiar state of facts and circumstances surrounding the particular case; that is, whether or not a case of natural equity is established, and if so, whether it is not made to yield to higher or superior equities in some other person; whether the party is not to be regarded as having waived it, or as having intended to waive or postpone it to another equity; or whether by the acts or omissions to act, or by the neglect of the party claiming such lien to enforce it within a reasonable time, the right is not lost as being the superior claim. These considerations control and vary the result as equity demands."

² Some of the English cases seem to go further, and to hold that the mere personal security of a *third* person does not discharge the lien: *Grant v. Mills*, 2 Ves. & B. 306; *Winter v. Lord Anson*, 3 Russ. 488; 1 Sim. & St. 434; *Mackreth v. Symmons*, 15 Ves. 329; *Tardiffe v. Scrughan*, cited 1 Brown Ch. 422; *Hughes v. Kearney*, 1 Schoales & L. 132; *Clarke v. Royle*, 3 Sim. 499; *Matthew v. Bowler*, 6

Hare, 110; *Collins v. Collins*, 31 Beav. 346; 1 Lead. Cas. Eq., 4th Am. ed., 464, 465. Receipt in full or acknowledgment of payment in the deed: *Ogden v. Thornton*, 30 N. J. Eq. 569; *Simpson v. McAllister*, 56 Ala. 228; *Bankhead v. Owen*, 60 Ala. 457; *Shorter v. Frazer*, 64 Ala. 74; *Holman v. Patterson's Heirs*, 29 Ark. 357; *Walton v. Hargroves*, 42 Miss. 18; 97 Am. Dec. 429; *Dodge v. Evans*, 43 Miss. 570; [*Thompson v. Corrie*, 57 Md. 197; but such acknowledgment is, of course, *prima facie* evidence of payment: *Kelly v. Karsner*, 81 Ala. 500.] A judgment recovered for the debt: *Graves v. Contant*, 31 N. J. Eq. 763; *Ball v. Hill*, 48 Tex. 634; *Waldrom v. Zacharie*, 54 Tex. 503; [but this operates as a waiver in California: *Fitzell v. Leaky*, 72 Cal. 477.] The grantee's own note, bill, etc.: *Kent v. Gerhard*, 12 R. I. 92; 34 Am. Rep. 612; *Dibrell v. Smith*, 49 Tex. 474; *Irvin v. Garner*, 50 Tex. 48; *Madden v. Barnes*, 45 Wis. 135; 30 Am. Rep. 703; *Moore v. Worthy*, 56 Ala. 163 (note of husband and wife on deed to the wife); *Davenport v. Murray*, 68 Mo. 198 (same); *Lavender v. Abbott*, 30 Ark. 172; *Corlies v. Howland*, 26 N. J. Eq. 311; *Nichols v. Glover*, 41 Ind. 24; *Brown v. Porter*, 2 Mich. N. P. 12; [*Dance v. Dance*, 56 Md. 433.] In Alabama the lien remains and may be enforced, although the debt is barred by the statute of limitations: *Flinn v. Barber*, 61 Ala. 530; *Bizzell v. Nix*, 60 Ala. 281; 31 Am. Rep. 38; *Chapman v. Lee*, 64 Ala. 483; *Shorter v. Frazer*, 64 Ala. 74; [*Ware v. Curry*, 67 Ala. 274;] *contra*,

ever, the grantee's own bond, note, or other promise is given, not as a *security* for the price, but as a *substitute* for or in *novation* of the purchase price, so that no *debt for the price* any longer exists, the lien is destroyed, and *a fortiori* this result follows where the bond, or note, or engagement of a third person is thus given.¹ The complementary doctrine is also generally settled, that the acceptance of distinct independent security for the purchase price, other than the grantee's own personal undertaking, destroys or discharges the lien, unless the continued existence of the lien is agreed upon by the parties. While this doctrine is generally accepted, there is much conflict of opinion in its application to particular conditions of fact.² The securities which ordinarily

Linthicum v. Tapscott, 28 Ark. 267. See also, as further illustrations of the text, *White v. Williams*, 1 Paige, 502; *Garson v. Green*, 1 Johns. Ch. 308; *Warren v. Fenn*, 28 Barb. 333; *Vandoren v. Todd*, 3 N. J. Eq. 397; *Brinkerhoff v. Vansciven*, 4 N. J. Eq. 251; *Thornton v. Knox's Ex'r*, 6 B. Mon. 74; *Denny v. Steakly*, 2 Heisk. 156; *Aldridge v. Dnnn*, 7 Blackf. 249; 41 Am. Dec. 224; *Tobey v. McAllister*, 9 Wis. 463; *Baum v. Grigsby*, 21 Cal. 172; 81 Am. Dec. 153.

¹ The sure criterion is the question whether any indebtedness *for the purchase price* any longer exists. If such debt has been discharged, the grantor thereby shows an intention to rely wholly upon the personal undertaking which he has accepted, in place of the original debt and the lien by which it would have been secured: 1 Lead. Cas. Eq., 4th Am. ed., 466-470; *Parrott v. Sweetland*, 3 Mylne & K. 655; *Buckland v. Pocknell*, 13 Sim. 406; *Dixon v. Gayfere*, 21 Beav. 118; 1 De Gex & J. 655; *Dyke v. Rendall*, 2 De Gex, M. & G. 209; *Keith v. Wolf*, 5 Bush, 646; *Thames v. Caldwell*, 60 Ala. 644 (draft of a third person taken in payment); *Moshier v. Meek*, 80 Ill. 79 (notes of grantee taken under such circumstances as to show that there really was no debt). [See also *Acton v. Waddington*, 46 N. J. Eq. 16; *Williams v. McCarty*, 74 Ala. 295; *Cum-*

mings v. Moore, 61 Miss. 184 (substituting note of a subgrantee is not necessarily a novation); *Boyd v. Jackson*, 82 Ind. 525 (same); but that the mere taking of a new note does not waive the lien, see *Joiner v. Perkins*, 59 Tex. 300; *Slaughter v. Owens*, 60 Tex. 668; *Walker v. Struve*, 70 Ala. 167; *Reader v. Nay*, 95 Ind. 164.]

² The parties may undoubtedly agree that the lien shall exist, notwithstanding any security taken for its payment: *Fonda v. Jones*, 42 Miss. 792; 2 Am. Rep. 669; *Durette v. Briggs*, 47 Mo. 356; *Sanders v. McAfee*, 41 Ga. 684; [*Cresap v. Manor*, 63 Tex. 485; *Boyer v. Austin*, 75 Mo. 81; *Briscoe v. Callahan*, 77 Mo. 134.] Some cases hold that, even in the absence of any such express agreement, the acceptance of independent security is not conclusive; that it merely raises a *prima facie* presumption of an intention to give up the lien, and that this presumption may be overcome and the lien established: *Mayes v. Hendry*, 33 Ark. 240; *Stroud v. Pace*, 35 Ark. 100; *Lavender v. Abbott*, 30 Ark. 172; *De Forest v. Holm*, 38 Wis. 516; *Fonda v. Jones*, 42 Miss. 792; 2 Am. Rep. 669; *Sanders v. McAfee*, 41 Ga. 684; *Irvine v. Muse*, 10 Heisk. 477. [See also *Tedder v. Steele*, 70 Ala. 347; *Gnash v. George*, 58 Iowa, 492; *Woodall v. Kelly*, 85 Ala. 368; 7 Am. St. Rep. 57; *Slaughter v. Owens*, 60 Tex. 668; *Jarman v.*

produce this effect are, the grantee's mortgage on the very land conveyed; his mortgage on other land; the note, bill, bond, or undertaking of a third person; the note or bill of the grantee indorsed or guaranteed by a third person, and the like; but the decisions are not unanimous.¹ Finally, after the lien has risen against the

Farley, 7 Lea, 141; Hunt v. Marsh, 80 Mo. 396.] The weight of authority, however, seems to be in plain accordance with the statement of the text, that such security *ipso facto* destroys the lien, unless such effect is prevented by agreement.

¹ *The general doctrine:* Mackreth v. Symmons, 15 Ves. 329; Nairn v. Prowse, 6 Ves. 752, 760 (mortgage on other land); Bond v. Kent, 2 Vern. 281; Hughes v. Kearney, 1 Schoales & L. 132, 135; 1 Lead. Cas. Eq. 471, 472; Anderson v. Donnell, 66 Ind. 150; Clark v. Stilson, 36 Mich. 482; Perry v. Grant, 10 R. I. 334; Walker v. Carroll, 65 Ala. 61; Brown v. Gilman, 4 Wheat. 255, 290; Fish v. Howland, 1 Paige, 20, 30; [Masters v. Templeton, 92 Ind. 447; Ilett v. Collins, 103 Ill. 74; Hunt v. Marsh, 80 Mo. 396; Kyle v. Bellinger, 79 Ala. 516; Dietrich v. Folk, 40 Ohio St. 635.] *Mortgage by the grantee:* According to the general current of decisions, a mortgage by the grantee on the land conveyed or on other land destroys the lien: Tinsley v. Tinsley, 52 Iowa, 14; Stuart v. Harrison, 52 Iowa, 511; Escher v. Simmons, 54 Iowa, 269; Neal v. Speigle, 33 Ark. 63; Gaylord v. Knapp, 15 Hun, 87; Pease v. Kelly, 3 Or. 417; Wells v. Harter, 56 Cal. 342; Camden v. Vail, 23 Cal. 633; Richards v. McPherson, 74 Ind. 158; Little v. Brown, 2 Leigh, 353; Young v. Wood, 11 B. Mon. 123; Johnson v. Sugg, 13 Smedes & M. 346. [See also Land Co. v. Peck, 112 Ill. 408, 451; Walker v. Struve, 70 Ala. 167; Orrick v. Durham, 79 Mo. 174 (mortgage for a portion of the purchase-money waives the lien for the remainder); Ryhiner v. Frank, 105 Ill. 326; McClellan v. Coffin, 93 Ind. 456; Masters v. Templeton, 92 Ind. 447 (mortgage on other land of grantees).] It seems, however, to be the settled rule in Texas that a mortgage by the grantee on the premises conveyed does not defeat the grantor's

lien: Burgess v. Millican, 50 Tex. 397; Wasson v. Davis, 34 Tex. 159; De Bruhl v. Maas, 54 Tex. 464; and there are decisions in some other states which either hold the same, or that the lien was not defeated by the mortgage, under the particular circumstances: Armstrong v. Ross, 20 N. J. Eq. 109; De Forest v. Holum, 38 Wis. 516; Anketel v. Converse, 17 Ohio St. 11; 91 Am. Dec. 115; Boos v. Ewing, 17 Ohio, 500; 49 Am. Dec. 478; Linville v. Savage, 58 Mo. 248; Morris v. Pate, 31 Mo. 315. If for any reason, however, the mortgage is void, the lien is not defeated; as where it was given by a married woman, and was therefore a nullity: Kent v. Gerhard, 12 R. I. 92; 34 Am. Rep. 612; Martin v. Cauble, 72 Ind. 67; [see, however, Jackson v. Stanley, 87 Ala. 270;] or where it was forged: Fouch v. Wilson, 60 Ind. 64; 28 Am. Rep. 651; [or where the taking of the additional security is induced by fraud: Thomas v. Bridges, 73 Mo. 530; Gnash v. George, 58 Iowa, 492; Brown v. Byam, 65 Iowa, 374; Himes v. Langley, 85 Ind. 77;] the decision in Camden v. Vail, 23 Cal. 633, is opposed to these cases, but seems to be unsupported in this respect either by principle or by authority. It is an altogether different case when the mortgage, being valid, merely turns out to be an insufficient security. [In such case the lien is waived: Kendrick v. Eggleston, 56 Iowa, 128; 41 Am. Rep. 90; Akers v. Luse, 56 Iowa, 346. A *pledge* of shares of stock is also presumptively a waiver: Jackson v. Stanley, 87 Ala. 270.] *Undertakings of third persons:* It is generally held by the American courts that his acceptance of the bond, note, bill, or other personal undertaking of a third person, or the note or bill of the grantee with the indorsement or guaranty of a third person, defeats the lien: Hazeltine v. Moore, 21 Hun, 355; Vail v. Foster, 4 N. Y.

grantee, it may be waived as against third persons by the laches or affirmative acts of the grantor himself. In other words, the grantor may, by his negligence or other acts, postpone his lien, or estop himself from asserting it against third persons who have acquired title under the grantee.¹

§ 1253. **Against Whom the Lien Avails.** — The grantor's lien once arising, and not waived by any act or default of his, avails against the grantee himself, his heirs, devisees, and other immediate successors in interest.² It

312; *Stevens v. Rainwater*, 4 Mo. App. 292; *Durette v. Briggs*, 47 Mo. 356; *Durham v. Heirs of Daugherty*, 30 La. Ann., pt. 2, 1255; *Haskell v. Scott*, 56 Ind. 564; *Carrico v. Farmers' etc. Bank*, 33 Md. 235 (grantee's note with indorser); *McGonigal v. Plummer*, 30 Md. 422; *Campbell v. Henry*, 45 Miss. 326; *Sanders v. McAfee*, 41 Ga. 684; *Baum v. Grigsby*, 21 Cal. 172; 81 Am. Dec. 153; [*Donegan's Adm'r v. Hentz*, 70 Ala. 437 (bill of exchange, with indorsers); *Walker v. Struve*, 70 Ala. 167; *Christy v. McKee*, 94 Mo. 241; *Rice v. Rice*, 36 Fed. Rep. 860 (note with indorsement); *Springfield etc. R. R. Co. v. Stewart*, 51 Ark. 285;] when land is really bought by the husband, but by his direction the conveyance is made to his wife, it is held that the acceptance of *his* note for the price does not destroy the lien: *Moore v. Worthy*, 56 Ala. 163; *Davenport v. Murray*, 68 Mo. 198; [*Hunt v. Marsh*, 80 Mo. 396; *Williams v. Crow*, 84 Mo. 298; see also *Parker v. McBee*, 61 Miss. 134 (no waiver from fact that the note was signed also by the husband of the grantee); *Crampton v. Prince*, 83 Ala. 246; 3 Am. St. Rep. 718; *Chapman v. Peebles*, 84 Ala. 283; *Jackson v. Stanley*, 87 Ala. 270; *Davis v. Smith*, 88 Ala. 596; *Baker v. Gilbert*, 93 Ind. 70;] but, *per contra*, see *Andrus v. Coleman*, 82 Ill. 26; 25 Am. Rep. 289. The decisions on the general rule are not uniform, and it has been held that personal security of a third person does not defeat the lien: *Stroud v. Pace*, 35 Ark. 100 (grantee's note secured by a third person); *McClure v. Harris*, 12 B. Mon. 261; *Tiernan v. Thurman*, 14 B. Mon. 224; *Burrus v. Roulhac's Adm'r*, 2 Bush, 39; [*Loomis*

v. D. & St. P. R. R. Co., 17 Fed. Rep. 301 (grantee's accepted draft); *Jobe v. Chedister*, 5 Lea, 346 (same).] As to notes given by subgrantees and the lien against them, see *Wasson v. Davis*, 34 Tex. 159; *Gordon v. Manning*, 44 Miss. 756; *Wood v. Sullens*, 44 Ala. 686; *Burgess v. Greene*, 64 Ala. 509; *McLaurie v. Thomas*, 39 Ill. 291; *Effinger v. Ralston*, 21 Gratt. 430.

¹ *Laches.* — Where the grantor delivered the deed with a receipt of payment in full indorsed thereon to the grantee, and the grantee, by depositing the deed as security, obtained a loan from a person who had no notice of the grantor's rights, the grantor's lien was held postponed to the equitable mortgage of the lender: *Rice v. Rice*, 2 Drew. 73; the grantor, by aiding and encouraging the grantee to sell the land as though it was free from encumbrance, and failing to disclose his own lien, may estop himself from setting it up as against such purchaser: *Henson v. Westcott*, 82 Ill. 224; *Reily v. Miami etc. Co.*, 5 Ohio, 333; *Atkinson v. Lindsey*, 39 Ind. 296; *Thompson v. Dawson*, 3 Head, 384; *Burns v. Taylor*, 23 Ala. 255; also, when there is no such concealment, the grantor, by joining with the grantee in mortgaging or conveying the land, or in otherwise dealing with it, may waive his original lien against the parties who thus obtain interests under the grantee: *Tinsley v. Tinsley*, 52 Iowa, 14 (joining in a mortgage on the land); *Burgess v. Greene*, 64 Ala. 509.

² *Mackreth v. Symmons*, 15 Ves. 329; *Simpson v. McAllister*, 56 Ala. 228; *Bankhead v. Owen*, 60 Ala. 457; *Shorter v. Frazer*, 64 Ala. 74; *Walton v. Hargroves*, 42 Miss. 18; 97 Am. Dec.

also avails against all subsequent purchasers and encumbrancers of the land under the grantee who are not *bona fide* purchasers for a valuable consideration and without notice.¹ It does not prevail against a subsequent *bona fide* purchaser or mortgagee of the land for a valuable consideration and without notice of the grantee's equity.² Whether the grantor's lien is or is not superior to that

429; against grantee's heirs: Bayley v. Greenleaf, 7 Wheat. 46; Warner v. Van Alstyne, 3 Paige, 513; Shirley v. Sugar Ref. Co., 2 Edw. Ch. 505; against his widow's dower: Fisher v. Johnson, 5 Ind. 492; and against her homestead right: McHendry v. Reilly, 13 Cal. 75.

¹ The lien prevails, therefore, against mere volunteers, purchasers, or encumbrancers not paying value, although without notice, and all purchasers and encumbrancers with notice who have paid value: 1 Lead. Cas. Eq. 477-481; Graves v. Coutant, 31 N. J. Eq. 763; Simpson v. McAllister, 56 Ala. 228; Bankhead v. Owen, 60 Ala. 457; Gordon v. Bell, 50 Ala. 213; Shorter v. Frazer, 64 Ala. 74; Walton v. Hargroves, 42 Miss. 18; 97 Am. Dec. 429; Stafford v. Van Rensselaer, 9 Cow. 316; Magruder v. Peter, 11 Gill & J. 217. Volunteers: Grant v. Mills, 2 Ves. & B. 306; Frail v. Ellis, 16 Beav. 350; Tucker v. Hadley, 52 Miss. 414; McLain v. Thompson, 52 Miss. 418; Pylant v. Reeves, 53 Ala. 132; 25 Am. Rep. 605; Carver v. Eads, 65 Ala. 190 (deed to wife where husband was the real purchaser); Higgins v. Kendall, 73 Ind. 522 (a subsequent grantee who did not pay until after receiving notice); [see also Mitchell v. Dawson, 23 W. Va. 86; Craft v. Russell, 67 Ala. 9.] Purchasers with notice: Hughes v. Kearney, 1 Schoales & L. 132; Norris v. Chambers, 29 Beav. 246; Mast v. Raper, 81 N. C. 330; Whetsel v. Roberts, 31 Ohio St. 503; Swan v. Benson, 31 Ark. 728 (knowledge that part of the original purchase-money remains unpaid is a sufficient notice). [See also Butterfield v. Okie, 36 N. J. Eq. 482; Mitchell v. Dawson, 23 W. Va. 86; Chapman v. Liggett, 41 Ark. 292; Stephens v. Shannon, 43 Ark. 467; Woodall v. Kelly, 85 Ala. 368; 7 Am. St. Rep. 57; Strohm v. Good, 113 Ind. 93; Acton v. Waddington, 46

N. J. Eq. 16; Christopher v. Christopher, 64 Md. 583; Petry v. Ambroscher, 100 Ind. 510; Beal v. Harrington, 116 Ill. 113; Thomas v. Bridges, 73 Mo. 530; Orrick v. Durham, 79 Mo. 174 (an unrecorded deed which was essential to the purchaser's claim of title showed by its recitals that purchase-money had not been paid); Dickinson v. Worthington, 10 Fed. Rep. 860 (recitals in the order of court authorizing the sale); Exchange Bank v. Stone, 80 Ky. 109 (assignee in bankruptcy of grantee is a volunteer).]

² Cator v. Earl of Pembroke, 1 Brown Ch. 302; Bayley v. Greenleaf, 7 Wheat. 46; Dagger v. Taylor, 60 Ala. 504 (a subgrantee); Burgess v. Greene, 64 Ala. 509 (same); Thurman v. Stoddard, 63 Ala. 336; Shorter v. Frazer, 64 Ala. 74; Simpson v. McAllister, 56 Ala. 228; Bankhead v. Owen, 60 Ala. 457; Gordon v. Bell, 50 Ala. 213; Russell v. Dodson, 6 Baxt. 16; Walton v. Hargroves, 42 Miss. 18; 97 Am. Dec. 429; Higgins v. Kendall, 73 Ind. 522; [Hooper v. Strahan, 71 Ala. 75; Traphagen v. Hand, 36 N. J. Eq. 334; Dance v. Dance, 56 Md. 433;] as to what constitutes notice by recitals in deed, by possession, etc., see *ante*, vol. 2, §§ 626, 628. Where a legal lien, by mortgage or otherwise, on the land, or a part thereof, is created at the same time as the grantor's equitable lien, such legal lien has the preference: Robinson v. McWhirter, 52 Tex. 201; Dugger v. Tayloe, 60 Ala. 504; Fisk v. Potter, 2 Abb. App. 138. The premises subject to the lien in the hands of the original grantee, A, being conveyed to a second grantee, B, who is a *bona fide* purchaser without notice, if the purchase-money due from B to A is still unpaid, the original grantor's lien may, it seems, be enforced against it as a fund substituted in place of the land: Lench v. Lench, 10 Ves. 511.

of subsequent judgments recovered against the grantee is a question upon which the American decisions are in direct conflict; nor is it possible by any interpretation to reconcile their opposing views. On principle, however, — and especially when considered in connection with the universal system of registry, — it seems to me clear that the subsequent judgment liens are entitled to precedence.¹

¹ Of course, it is assumed in this statement that the judgment creditors have no notice of the grantor's prior lien; if they have notice, they are governed by the general rule which applies to all subsequent encumbrancers with notice. The divergent and often uncertain conclusions reached by text-writers, and the conflicting decisions of the courts, upon this question, are undoubtedly due in great measure to the method, which has unfortunately prevailed, of describing and treating the *grantor's* lien upon conveyance and the *vendor's* lien upon a mere agreement to convey, in the same terms by the same formula. Two interests which are essentially unlike in their nature and in many of their incidents are thus confounded, and dealt with as one and the same. The radical difference between these two so-called "liens," *on principle*, appears in the clearest manner with regard to their respective effects upon subsequent judgments. The *vendor* under a land contract retains the legal title and estate; the vendee, although admitted to possession, has only an *equitable* interest. If the contract is not recorded, the records show the legal estate in the vendor; if the contract *is* recorded, the record still shows that the vendee's interest is wholly equitable. In no case, therefore, can a judgment creditor be misled by the records to suppose that the vendee has obtained the legal title. The judgment recovered against the vendee is then a lien upon a mere equitable interest, obtained under such circumstances that the judgment creditor must have notice of the legal title and estate being vested in another person. This legal title and estate of the vendor should, therefore, prevail against the subsequent judgment lien upon the equitable interest of the vendee, and the judgment cred-

itor is not and cannot be prejudiced thereby. In fact, it is a complete misuse of legal terms to call the interest of the vendor, *as against such third persons claiming under the vendee*, a lien, when it is the full legal estate. Between the *vendor* and the *vendee* themselves, for the purpose of working out the purely equitable conception as to the effects of an agreement to convey, the vendor's interest is properly called a lien *in equity*; but when the *legal* rights of third persons intervene, they should not be interfered with or sacrificed to such special nomenclature. The condition of the grantor's lien 'is radically different. The grantee holds the full legal title and estate, and he appears by the records to be the legal owner. The grantor's interest is purely an equitable lien, secret, undisclosed by the records. A judgment creditor of the grantee has a right to regard him as the complete owner in reliance upon the records; he has no knowledge, and ordinarily no means of knowledge, of the grantor's secret equitable lien. The judgment against the grantee is a *legal* lien upon the legal estate in his hands. It is not the case of two successive *equitable* liens of the same nature, where priority of time gives precedence. It is true that a prior equitable *estate* may sometimes prevail against a subsequent *legal* lien by judgment; but this doctrine is confined by the strong tendency of American decisions to true equitable estates. The grantor's interest is in no sense an equitable *estate*; it is a mere lien, not *essentially* of a higher nature than that of a judgment, while that of the judgment possesses the superiority of being legal. The doctrine that between a prior *equitable* interest and a subsequent *legal* interest of equal character, the legal will prevail, seems to be controlling. In my opinion, it is

§ 1254. **In Favor of Whom the Lien Avails.** — In England the prevailing opinion regards the lien not as merely personal to the grantor, but as an interest in land of which other parties may avail themselves by subrogation or marshaling, as legatees or judgment creditors of the grantor, or by direct assignment. In this country the strong tendency of the courts has been, for reasons difficult to be understood, to treat the lien as strictly personal to the grantor, and as incapable of being transferred, either by direct assignment or by equitable subrogation. It may, of course, be enforced by the grantor himself, and by his heirs or immediate successors.¹ In England it may be enforced by an assignee, and an assignment of the debt, it seems, carries also the lien.² The English doctrine is followed in a portion of the states, but in most of them the lien is held personal to the grantor, and not assignable.³ By this theory, an assignment of the debt, either

plain from this analysis, *on principle*, that the prior grantor's equitable lien must succumb to the subsequent legal lien of the judgment against the legal estate of the grantee, when the judgment is recovered for a valuable consideration and without notice. Among the great number of cases, the following illustrate the foregoing conclusion that the grantor's lien does not prevail against such judgment: *Allen v. Loring*, 34 Iowa, 499; *Dawson v. Girard L. Ins. Co.*, 27 Minn. 411; *Bayley v. Greenleaf*, 7 Wheat. 46; *Cook v. Banker*, 50 N. Y. 655; *Robinson v. Williams*, 22 N. Y. 380; *Hulett v. Whipple*, 58 Barb. 224; *Taylor v. Baldwin*, 10 Barb. 626; *Cook v. Kraft*, 3 Lans. 512; *Johnson v. Cawthorn*, 1 Dev. & B. Eq. 32; 27 Am. Dec. 250; *Webb v. Robinson*, 14 Ga. 216; *Roberts v. Rose*, 2 Humph. 145, 147; *Gann v. Chester*, 5 Yerg. 205. [See also *Cutler v. Ammon*, 65 Iowa, 281.] On the same ground, the lien is held not to prevail against attaching creditors of the grantee without notice: *Allen v. Loring*, *supra*; *Porter v. Dubuque*, 20 Iowa, 440; *Adams v. Buchanan*, 49 Mo. 64.

On the other hand, the following cases give the grantor's lien the pre-

cedence: *Lamberton v. Van Voorhis*, 15 Hun, 336; *Tucker v. Hadley*, 52 Miss. 414 (against a purchaser at execution sale); *Walton v. Hargroves*, 42 Miss. 18; 97 Am. Dec. 429; *Parker v. Kelly*, 10 Smedes & M. 184; *Thompson v. McGill*, Freem. (Miss.) 401; *Lewis v. Caperton's Ex'r*, 8 Gratt. 148; *Aldridge v. Dunn*, 7 Blackf. 249; 41 Am. Dec. 224. [See also *Dickerson v. Carroll*, 76 Ala. 377 (notice of the grantor's lien received by the judgment creditor before he obtains an order of sale defeats the statutory priority of the judgment lien); *Lissa v. Posey*, 64 Miss. 352 (against a purchaser at execution sale); *Bowman v. Faw*, 5 Lea, 472.]

¹ By his heirs: *Lavender v. Abbott*, 30 Ark. 172. Devisee: *Tiernan v. Beam*, 2 Ohio, 383; 15 Am. Dec. 557.

² *Dryden v. Frost*, 3 Mylne & C. 670; *Lacey v. Ingle*, 2 Phill. Ch. 413; *Rayne v. Baker*, 1 Giff. 241.

³ In the following states it cannot be transferred by assignment nor by subrogation: —

Arkansas: *Shall v. Biscoe*, 18 Ark. 142, 162; *Williams v. Christian*, 23 Ark. 255; *Hutton v. Moore*, 26 Ark. 382, 396; *Jones v. Doss*, 27 Ark. 518; *Carlton v. Buckner*, 28 Ark. 66; [but

with or without an express assignment of the lien, does not carry the lien so that it may be enforced by or on be-

see *Rodman v. Sanders*, 44 Ark. 504 (one who pays the debt at the request of the debtor-vendee, and with the latter's consent retains the note and deed, and thus manifests an intention to keep the lien alive, is subrogated thereto.) But an assignment as collateral security is permitted: *Blevins v. Rogers*, 32 Ark. 258; *Crawley v. Riggs*, 24 Ark. 563; *Carlton v. Buckner*, *supra*. [See also *Chapman v. Liggett*, 41 Ark. 292.]

California: *Baum v. Grigsby*, 21 Cal. 172; 81 Am. Dec. 153; *Williams v. Young*, 21 Cal. 227; *Ross v. Heintzen*, 36 Cal. 313. [But if the grantor is obliged to take up the note by reason of its non-payment, the lien is revived: *Bancroft v. Cosby*, 74 Cal. 583.]

Georgia: *Wellborn v. Williams*, 9 Ga. 86; 52 Am. Dec. 427; *Webb v. Robinson*, 14 Ga. 216.

Illinois: *Small v. Stagg*, 95 Ill. 39; *Wing v. Goodman*, 75 Ill. 159; *Moshier v. Meek*, 80 Ill. 79; *Carpenter v. Mitchell*, 54 Ill. 126; [Gruhn v. Richardson, 128 Ill. 178.]

Maryland: *Dixon v. Dixon*, 1 Md. Ch. 220; *Iglehart v. Armiger*, 1 Bland, 519.

[*Minnesota*: *Hammond v. Peyton*, 34 Minn. 529.]

Mississippi: *Rutland v. Brister*, 53 Miss. 683; *Pitts v. Parker*, 44 Miss. 247; *Lindsey v. Bates*, 42 Miss. 397 (but if grantor is compelled to take up the note assigned, the lien revives in his favor); *Stratton v. Gold*, 40 Miss. 778; see *Perkins v. Gibson*, 51 Miss. 699; 24 Am. Rep. 644; [Parker v. McBee, 61 Miss. 134 (if the grantor held title as trustee, he does not waive the lien by indorsing the note in blank and delivering it to his *cestui que trust* for collection). But by the Code of 1880, sec. 1124, the rule is changed, and the assignment of the claim for purchase-money carries with it the lien: *Louisiana Nat. Bank v. Knapp*, 61 Miss. 485.]

Missouri: *Pearl v. Hervey*, 70 Mo. 160; *Adams v. Cowherd*, 30 Mo. 458. [In *Sloan v. Campbell*, 71 Mo. 387, 36 Am. Rep. 493, however, it was held that the lien is assignable, and passes with the purchase-money note.]

New York: *White v. Williams*, 1 Paige, 502; and see *Smith v. Smith*, 9 Abb. Pr., N. S., 420.

Ohio: *Brush v. Kinsley*, 14 Ohio, 20; *Horton v. Horner*, 14 Ohio, 437.

[*Oregon*: *First Nat. Bank v. Salem C. F. M. Co.*, 39 Fed. Rep. 89.]

Tennessee: *Durant v. Davis*, 10 Heisk. 522; *Tharpe v. Dunlap*, 4 Heisk. 674.

In the following states the lien may be assigned with the debt:—

Alabama.—A transfer of the debt carries the lien: *Simpson v. McAllister*, 56 Ala. 228; *Wells v. Morrow*, 38 Ala. 125; *White v. Stover*, 10 Ala. 441; [Wilkinson v. May, 69 Ala. 33;] but if the grantor assigns the notes for the debt "without recourse," or in any other manner which cuts off all his own liability thereon, the lien is held not to pass: *Bankhead v. Owen*, 60 Ala. 457; *Barnett v. Riser's Ex'rs*, 63 Ala. 347; *Walker v. Carroll*, 65 Ala. 61. [And a transfer by delivery merely of the note did not pass the lien: *Prickett v. Sibert*, 71 Ala. 194; *Preston v. Ellington*, 74 Ala. 133; *Daily's Adm'r v. Reid*, 74 Ala. 415; *Weaver v. Brown*, 87 Ala. 533; but these last two rules are now changed by statute: Code, sec. 1764; *Davis v. Smith*, 88 Ala. 596. The transferee, however, must be a purchaser of the note, in order to obtain the right to enforce the lien: *Jones v. Lockard*, 89 Ala. 575.]

Indiana: *Nichols v. Glover*, 41 Ind. 24; *Johns v. Sewell*, 33 Ind. 1; *Wiseman v. Hutchinson*, 20 Ind. 40; *Kern v. Hazlerigg*, 11 Ind. 443; 71 Am. Dec. 360; [Otis v. Gregory, 111 Ind. 504 (subrogation); *Lowry v. Smith*, 97 Ind. 466.]

Kentucky: *Broadwell v. King*, 3 B. Mon. 449; *Honore's Ex'r v. Bakewell*, 6 B. Mon. 67; 43 Am. Dec. 147; *Ripperdon v. Cozine*, 8 B. Mon. 465.

[*Mississippi*: A transfer of the debt carries the lien: Code 1880, sec. 1124; *Louisiana Nat. Bank v. Knapp*, 61 Miss. 485.]

[*Missouri*: *Sloan v. Campbell*, 71 Mo. 387; 36 Am. Rep. 493.]

Texas: *De Bruhl v. Maas*, 54 Tex. 464; *White v. Downs*, 40 Tex. 225; *Watt v. White*, 33 Tex. 421. [See

half of the assignee. Where an express assignment is thus forbidden, it necessarily follows that no equitable assignment by subrogation is possible. Notwithstanding this weight of authority, the restrictive rule seems to rest on no ground of principle.

§ 1255. **Grantor's Lien by Reservation.** — In several of the states the practice has become quite common of reserving a lien, as security to the grantor for the unpaid purchase price, by means of an express clause or stipulation in the deed of conveyance. Such a reservation creates a specific lien which in its essential nature more resembles the ordinary purchase-money mortgage given back by the grantee, than the implied equitable lien of the grantor heretofore described; for since it is contained in and recorded with the deed, it becomes notice to and takes precedence of all subsequent purchasers and encumbrancers holding under or deriving title through the same conveyance; and it generally has the same priority among other outstanding encumbrances which is accorded to the purchase-money mortgage.¹

Brooks v. Young, 60 Tex. 32; Ourey v. Saunders, 77 Tex. 278 (subrogation); Hicks v. Morris, 57 Tex. 658.]

Whenever, by an arrangement between the parties, a note for the purchase price is given by the grantee to a third person instead of to the grantor, such person is generally held entitled to enforce the lien: Perkins v. Gibson, 51 Miss. 699; 24 Am. Rep. 644; Nichols v. Glover, 41 Ind. 24; Latham v. Staples, 46 Ala. 462; Campbell v. Roach, 45 Ala. 667; Hamilton v. Gilbert, 2 Heisk. 680; Mitchell v. Butt, 45 Ga. 162; Francis v. Wells, 2 Col. 660. [See also Woodall v. Kelly, 85 Ala. 368; 7 Am. St. Rep. 57; Johnson v. Townsend, 77 Tex. 639; Louisiana Nat. Bank v. Knapp, 61 Miss. 455; Joiner v. Perkins, 59 Tex. 300; Tysen v. Wabash R'y Co., 15 Fed. Rep. 763; Mize v. Barnes, 78 Ky. 506.]

¹ It appears, in a previous note, that the state statutes which have abolished the ordinary equitable grantor's lien have excepted from their operation this lien arising from reservation.

It is not unusual in some states for the grantee to give notes for the unpaid price, which notes are specifically described in the deed and made liens on the land conveyed for their respective amounts, so that their holder has a virtual mortgage on the land, good against all subsequent grantees, mortgagees, judgment creditors, etc.: King v. Young Men's Ass'n, 1 Woods, 386; Heist v. Baker, 49 Pa. St. 9; Stratton v. Gold, 40 Miss. 778, 781; Davis v. Hamilton, 50 Miss. 213; Pugh v. Holt, 27 Miss. 461; Caldwell v. Fraim, 32 Tex. 310; White v. Downs, 40 Tex. 225; Carpenter v. Mitchell, 54 Ill. 126; Markoe v. Andras, 67 Ill. 34; Carr v. Holbrook, 1 Mo. 240; Dingley v. Bank of Ventura, 57 Cal. 467; Taliefferro v. Barnett, 37 Ark. 511; Campbell v. Rankin, 28 Ark. 401; Cordova v. Hood, 17 Wall. 1; Kausler v. Ford, 47 Miss. 289; Moore v. Lackey, 53 Miss. 85; Blaisdell v. Smith, 3 Ill. App. 150; Osborne v. Royer, 1 Lea, 217; Collins v. Richart, 14 Bush, 621; Carr v. Thompson, 67 Mo. 472; [Kirk v. Williams, 24 Fed. Rep. 437;

§ 1256. **What Creates a Lien by Reservation.**—The provision which shall thus create a lien by reservation may be of various forms; but it must be something more than a recital that a specified amount of the purchase price remains unpaid. It must show the amount of the purchase-money due which is to be secured by the lien, and must in some manner express an intent that the payment of such amount is to be charged upon the land,—that the land is conveyed subject to a definite charge for the payment of the sum.¹

Sidwell v. Wheaton, 114 Ill. 267. It seems that one who has contracted, in the ordinary manner, to sell land has a right to reserve such lien in the deed, although the reservation was not contracted for: *Findley v. Armstrong*, 23 W. Va. 113.]

¹ *Heist v. Baker*, 49 Pa. St. 9, holds that a provision in a deed of land, "to have and to hold the same under and subject, nevertheless, to the payment" of a certain sum at the death of the grantee, constitutes a valid lien on the land against all subsequent owners, etc.; [*Eichelberger v. Gitt*, 104 Pa. St. 64.] In *Pugh v. Holt*, 27 Miss. 461, a stipulation that the title shall not vest in the grantee until the purchase price specified is paid was held to create such a specific lien. In *Carr v. Holbrook*, 1 Mo. 240, a clause that the deed shall be absolute upon the payment of certain notes described, but in default of their payment shall be void, produced the same effect. *Harvey v. Kelly*, 41 Miss. 490, 93 Am. Dec. 267, goes further, and holds that such kind of lien is not confined to the payment of a certain sum of money due, but may be made to secure the performance of any obligation agreed upon by the parties,—for example, to secure an agreement to pay by delivering certain articles. If this decision is followed, the scope of the lien will be much enlarged, and the difference between it and the implied grantor's (vendor's) lien will be much more pronounced. The recital in a deed that "said land and improvements are held bound for the payment of said two notes" creates a valid lien on the land: *Talieferro v. Barnett*, 37 Ark. 511; where a deed recited that two thirds of

the purchase-money had been paid, and then reserved a lien for *all* unpaid purchase-money, but in fact only one third had been paid, a lien as between the grantor and the grantee is created for the whole of the two thirds actually remaining unpaid: *Ledford v. Smith*, 6 Bush, 129; as against subsequent grantees or mortgagees who had only the constructive notice arising from the record and recitals of the deed itself, the lien would certainly not extend beyond the one third. Where a lien has been properly reserved as security for payment of notes, the substitution of a new note in place of one originally given does not disturb the lien: *Kausler v. Ford*, 47 Miss. 289. Whatever words distinctly convey the idea that the grantor retains or reserves a lien on the land creates an express lien by reservation: *Moore v. Lackey*, 53 Miss. 85. Two partners, W. and Z., sold their interest to the third, Y.; W. received from Y. cash in full for his share; Z. received notes payable at different times for his; the deed from the two contained the following: "And the said Z. hereby retains a lien on the property hereby conveyed as security for the payment of the above-recited notes received in payment of his interest; the said W. has been paid up in full for his interest." Held, that the lien thus reserved extended to the entire property conveyed by both grantors, and was not confined to that portion of it originally belonging to Z.: *Patton v. Hoge*, 22 Gratt. 443. A deed describing notes given for the purchase price, and stating "to have and to hold on the payment of the notes hereintoforesaid," creates a

§ 1257. **Essential Nature of This Lien.**—This peculiar species of lien differs essentially from that which equity raises by implication in favor of the grantor, since it is based upon and created by express contract. It is in all essential elements a mortgage. The deed is made to embody an informal mortgage or defeasance, and is thus prevented from being absolute so long as the price remains unpaid. The lien is made a matter of record, is thus a constructive notice to all subsequent dealers with the land, and it is in fact governed by the rules which regulate the effect of an ordinary mortgage.¹ It is in fact an American

lien by reservation: *Blaisdell v. Smith*, 3 Ill. App. 150. And see also *Carr v. Thompson*, 67 Mo. 472; *Pillow v. Helm*, 7 Baxt. 545; *Hobson v. Edwards*, 57 Miss. 128 (stipulation in the note); *Osborne v. Royer*, 1 Lea, 217 (same); *French v. Dickey*, 3 Tenn. Ch. 302 (substitution of a new note); *Dingley v. Bank of Ventura*, 57 Cal. 467; *Baker v. Compton*, 52 Tex. 252.

¹ In *King v. Young Men's Ass'n*, 1 Woods, 386, Mr. Justice Bradley thus describes it: "The reservation of the vendor's [grantor's] lien in the deed of conveyance is equal to a mortgage taken for the purchase-money contemporaneously with the deed, and nothing more. The purchaser [grantee] has the equity of redemption precisely as if he had received a deed and given a mortgage for the purchase-money." The use of the term "equity of redemption" here is unfortunate. The grantee takes and holds the legal title and estate encumbered with the lien; his title is not equitable. The learned judge introduces the legal notions of mortgage with which he is familiar, but which certainly have no place in connection with this lien, which is the equitable notion of the mortgage stripped of all its legal environment. In *White v. Downs*, 40 Tex. 225, Gray, J., thus contrasts the ordinary "vendor's lien" with the grantor's lien by reservation: "The vendor's [grantor's] lien, properly understood, is not in all respects the same as the express lien often reserved in deeds of conveyance for payment of purchase-money, nor as strict mortgages or deeds of trust for it, nor yet as the

security held by a vendor who has only given a bond for the title. These are often confounded with the vendor's lien, because security of the purchase-money is common to all of them. But the vendor's lien arises wholly from inference or implication, which is invisible and cannot be recorded; the others are from express contract, visible to all, and may be recorded. All of the same consequences do not, therefore, necessarily result as to assignees or holders of the debt secured by the vendor's lien, nor as to purchasers of the land liable to it, as between the original parties and privies, which do often occur in the cases of express lien by contract." See also, to the same general effect, that this lien is one by express contract resembling that by a mortgage: *Robinson v. Woodson*, 33 Ark. 307; *Collins v. Richart*, 14 Bush, 621 (is a lien on the land, and not merely on the rents and profits); *Peters v. Clements*, 46 Tex. 114; *Masterson v. Cohen*, 46 Tex. 520; *Dingley v. Bank of Ventura*, 57 Cal. 467; *Coles v. Withers*, 33 Gratt. 186; *Talieferro v. Barnett*, 37 Ark. 511; [*Kirk v. Williams*, 24 Fed. Rep. 437; *Eichelberger v. Gitt*, 104 Pa. St. 64; *Bank v. Bradley*, 15 Lea, 279.] As further illustrations of its resemblance to a mortgage, and its difference from the purely equitable lien of the grantor: it is not defeated nor waived by the grantor's taking other security: *Carpenter v. Mitchell*, 54 Ill. 126; it can be assigned, and passes by a transfer of the note given for the price which it secures: *Carpenter v. Mitchell*; *Markoe v. Andras*,

mode of realizing the purely equitable conception of a mortgage stripped of all its legal forms and features.

§ 1258. **Operation and Effect of This Lien.** — It follows as a necessary consequence that when such a lien is expressly reserved in the deed, the grantee's title is, in a certain sense, imperfect until the price is paid; or, to speak more accurately, the title is encumbered, and all persons holding or claiming under or through the deed are affected with notice of the lien, and their rights are necessarily subordinate to it.¹ On principle, the lien by reservation should give the grantor the same rights of priority over other general encumbrancers which are held by the mortgagee in a purchase-money mortgage.

§ 1259. **The Grantor's Dealing with the Lien — Waiver — Assignment.** — The grantor's powers of dealing with the lien by reservation are much more extensive than

67 Ill. 34; it is foreclosed in equity, like a mortgage, and the right of redemption after foreclosure sale, given in case of mortgage by the law of some states, applies also to it: *Markoe v. Andras*.

¹ See, in this connection, as to the notice given to subsequent grantees, purchasers, encumbrancers, etc., by recitals and like provisions contained in the title deeds from, under, or through which they claim, *ante*, vol. 2, §§ 626, 628, and cases cited in the notes: *Stratton v. Gold*, 40 Miss. 778; *Thompson v. Heffner's Ex'rs*, 11 Bush, 333; *Collins v. Richart*, 14 Bush, 621; *Roosevelt v. Davis*, 49 Tex. 463; *Peters v. Clements*, 46 Tex. 114; *Caldwell v. Fraim*, 32 Tex. 310; *Masterson v. Cohen*, 46 Tex. 520; *Moore v. Lackey*, 53 Miss. 85; *Cordova v. Hood*, 17 Wall. 1 (binds subsequent grantees, etc.); *Ledford v. Smith*, 6 Bush, 129 (between the grantor and the grantee; see facts *ante*, in note under § 1256); *Dingley v. Bank of Ventura*, 57 Cal. 467; *Talieferro v. Barnett*, 37 Ark. 511. [See also *Sidwell v. Wheaton*, 114 Ill. 267; *Eichelberger v. Gitt*, 104 Pa. St. 64; *Bank v. Bradley*, 15 Lea, 279.] The lien is a security for the bond or note or other instrument by which the debt is evidenced; a sur-

render and cancellation of a bond given for the debt does not, therefore, necessarily extinguish the lien itself: *Coles v. Withers*, 33 Gratt. 186. For the same reason, a subsequent change in the form of the instrument by which the debt is evidenced, as a substitution of a new note in place of the original one, and the like, does not affect the lien: *Kausler v. Ford*, 47 Miss. 289; *French v. Dickey*, 3 Tenn. Ch. 302.

It has been held that the lien takes precedence over a prior judgment against the grantee: See *Parsons v. Hoyt*, 24 Iowa, 154. This is strictly in agreement with well-settled principle. The doctrine is clearly established that a purchase-money mortgage prevails against the general lien of a prior judgment, and that it prevents the attachment of many other liens upon the premises which might otherwise have affected them: See *ante*, vol. 2, § 725, note. Since the grantor's lien by reservation for the purchase price is tantamount to a purchase-money mortgage given back by the grantee, the same results should necessarily follow from it. In fact, the notice of the lien embodied in the deed itself is more complete and efficacious than the notice created by the record of a mortgage or the docket of a judgment.

those over the equitable lien heretofore described. His acts which would destroy the implied equitable lien, such as taking other security on land from the grantee, or taking notes of third persons as security, and the like, do not thus affect the existence and validity of the express lien.¹ The grantor may of course waive his lien; whether he does so is a matter of intention, which must appear either expressly or by acts directly inconsistent with its existence and indicating a clear intent to waive.² The doctrine is established by the great preponderance of authority, that this lien is not personal to the grantor, but may be transferred; that it passes by an assignment of the note, bond, or other evidence of debt given for the purchase price, and may be enforced by the assignee.³ When notes

¹ The reasons why the purely equitable lien should be defeated by the acceptance of independent security have no application whatever to the lien by reservation: *Carr v. Thompson*, 67 Mo. 472; *Strickland v. Summerville*, 55 Mo. 164; *Adams v. Cowherd*, 30 Mo. 458; *Price v. Lauve*, 49 Tex. 74 (taking a trust deed on other lands as security for the price does not affect the lien); *Carpenter v. Mitchell*, 54 Ill. 126; *McCaslin v. State*, 44 Ind. 151; *Lusk v. Hopper*, 3 Bush, 179; *Lewis v. Pusey*, 8 Bush, 615; *Fogg v. Rogers*, 2 Cold. 290; *Hines v. Perkins*, 2 Heisk. 395; *Magruder v. Peter*, 11 Gill & J. 217; *Schwarz v. Stein*, 29 Md. 112, 119; *Hurley v. Hollyday*, 35 Md. 469; *Knisely v. Williams*, 3 Gratt. 265; 46 Am. Dec. 193; *Hatcher's Adm'r v. Hatcher's Ex'rs*, 1 Rand. 53; *Ludington v. Gabbert*, 5 W. Va. 330; *Conner v. Banks*, 18 Ala. 42; 52 Am. Dec. 209; *Bradford v. Harper*, 25 Ala. 337; *Bozeman v. Ivey*, 49 Ala. 75. [See also *Dowdy v. Blake*, 50 Ark. 205; 7 Am. St. Rep. 88 (judgment on the debt not a waiver); *Bank v. Bradley*, 15 Lea, 279 (same); *Byrns v. Woodward*, 10 Lea, 444.]

² *Coles v. Withers*, 33 Gratt. 186; *Butler v. Williams*, 5 Heisk. 241; *French v. Dickey*, 3 Tenn. Ch. 302. [See also *Frazier v. Hendren*, 80 Va. 265; *Byrns v. Woodward*, 10 Lea, 444.]

³ *Carpenter v. Mitchell*, 54 Ill. 126; *Markoe v. Andras*, 67 Ill. 34; *Hobson v. Edwards*, 57 Miss. 128; *Osborne v. Royer*, 1 Lea, 217; *Blaisdell v. Smith*, 3 Ill. App. 150; *Moore v. Lackey*, 53 Miss. 85; *Kausler v. Ford*, 47 Miss. 289; *Campbell v. Rankin*, 28 Ark. 401; *Dingley v. Bank of Ventura*, 57 Cal. 467; *Talieferro v. Barnett*, 37 Ark. 511; but see *Pillow v. Helm*, 7 Baxt. 545. [Also, sustaining the general rule, *Morris v. Ham*, 47 Ark. 293; *Dowdy v. Blake*, 50 Ark. 205; 7 Am. St. Rep. 88.]

Where a lien was reserved in the deed as security for several notes, and these notes have been assigned to different persons, and the holder of one note brought a suit in equity making the grantor, the grantee, and the holders of all the other notes parties, and asked that the holders should respectively be subrogated to the rights of the grantor, the court held that the rule that the assignment of a note secured by a lien reserved in the deed does not transfer the lien to the assignee, and does not enable him to enforce the lien by a suit in his own right against the grantee, did not apply, and the relief asked was granted: *Campbell v. Rankin*, 28 Ark. 401. In *Robinson v. Woodson*, 33 Ark. 307, it is held that a lien by reservation is transferred to the grantee by a second deed acknowledging payment, when no payment had in

given for installments of the purchase price are secured by a lien reserved in the deed, and these notes are transferable, the lien or *quasi* mortgage acquires some of the elements of negotiability.¹ This lien is enforced in equity by a suit and relief similar in all respects to those for the foreclosure of a mortgage.²

SECTION VI.

THE VENDOR'S LIEN AND THE VENDEE'S LIEN ON CONTRACT FOR SALE AND PURCHASE.

ANALYSIS.

§§ 1260-1262. Vendor's lien under contract of sale.

§ 1260. General doctrine; vendor's lien and grantor's lien distinguished.

§ 1261. Essential nature and effects; vendor's interest determined by doctrine of equitable conversion.

§ 1262. How enforced.

§ 1263. Vendee's lien for purchase-money paid.

§ 1260. **Vendor's Lien under Contract of Sale.**—It has been said, in English and American decisions, that the vendor's lien may arise before conveyance as well as after; and the interest or right of the vendor under an ordinary contract for the sale of land, or a bond conditioned to sell and convey, or whatever may be the form of the agreement, has been called a vendor's lien, and treated in the same manner as the equitable lien arising in favor of the grantor upon an actual conveyance of the land where the

fact been made, and that under this second deed the grantor has the ordinary equitable lien as if the first one had not been made; and in *Summers v. Kilgus*, 14 Bush, 449, it is held that a grantor may release the lien by reservation, although he has previously assigned a note secured by such lien to a third person. It seems difficult to reconcile this decision with those which sustain the assignability of the lien and the rights of the assignee to enforce it.

¹ Where several notes are thus secured by a lien of reservation, the whole seems to be analogous to a mortgage given to secure several notes. If the notes are transferred to different persons, the right of the holders to participate in and enforce the lien would seem to depend upon the same rules which apply to notes secured by a mortgage: See *ante*, §§ 1201-1203.

² *Markoe v. Andras*, 67 Ill. 34; *Gaston v. White*, 46 Mo. 486; *King v. Young Men's Ass'n*, 1 Woods, 386.

purchase price in whole or in part is left unpaid.¹ This is an unnecessary and an incorrect use of terms; it confounds legal notions which are essentially different. There is a plain distinction between the lien of the grantor after a conveyance, and the interest of the vendor before conveyance. The former is not a legal estate, but is a mere equitable charge on the land; it is not even, in strictness, an equitable lien until declared and established by judicial decree.² In the latter, although possession may have been delivered to the vendee, and although under the doctrine of conversion the vendee may have acquired an equitable estate, yet the vendor retains the *legal title*, and the vendee cannot prejudice that legal title, or do anything by which it shall be divested, except by performing the very obligation on his part which the retention of such title was intended to secure,—namely, by paying the price according to the terms of the contract. To call this com-

¹ Smith v. Hibbard, 2 Dick. 730; Smith v. Evans, 28 Beav. 59; Whitehurst v. Yandall, 7 Baxt. 228; Bizzell v. Nix, 60 Ala. 281; 31 Am. Rep. 38; Johnson v. Nunnerly, 30 Ark. 153; Haughwout v. Murphy, 22 N. J. Eq. 531; Hall v. Jones, 21 Md. 439; Yancey v. Mauck, 15 Gratt. 300; Neel v. Clay, 48 Ala. 252; Servis v. Beatty, 32 Miss. 52; English v. Russell, 1 Hemp. 35; Amory v. Reilly, 9 Ind. 490; Stevens v. Chadwick, 10 Kan. 406; 15 Am. Rep. 348; Smith v. Rowland, 13 Kan. 245; Hill v. Grigsby, 32 Cal. 55. [See also Avery v. Clark, 87 Cal. 619; 22 Am. St. Rep. 272.] See also, as examples of cases when the lien exists, In re Patent Carriage Co., L. R. 2 Eq. 349; Lycett v. Stafford etc. R'y, L. R. 13 Eq. 261; Earl St. Germain v. Crystal Palace R'y, L. R. 11 Eq. 568; Wing v. Tottenham etc. R'y, L. R. 3 Ch. 740; Morgan v. Swansea etc. Authority, L. R. 9 Ch. Div. 582; Nives v. Nives, L. R. 15 Ch. Div. 649; Fry v. Prewett, 56 Miss. 783; Cotten v. McGehee, 54 Miss. 510; Prentice v. Nutter, 25 Minn. 484; Johnson v. Godden, 33 Ark. 600; Martin v. O'Bannon, 35 Ark. 62; Stephenson v. Rice, 12 W. Va. 575; Day v. Hale, 22 Gratt. 146; Vail v. Drexel, 9 Ill. App. 439; [also Williams v.

Simmons, 79 Ga. 649; Walker v. Kee, 16 S. C. 76.] Cases in which no lien existed: Dixon v. Gayfer, 1 De Gex & J. 635; Att'y-Gen. v. Sittingbourne etc. R'y, L. R. 1 Eq. 636; Earl of Jersey v. Briton etc. Dock Co., L. R. 7 Eq. 409; Prentice v. Nutter, 25 Minn. 484; Weare v. Linnell, 29 Mich. 224; Willis v. Searcy, 49 Ala. 222; Willard v. Reas, 26 Wis. 540; [Sykes v. Betts, 87 Ala. 537.]

² Although the right of the grantor is called a lien, yet, as will be more fully shown in the subsequent chapters on remedies, it is rather the potentiality of a lien; it cannot be enforced until the legal remedies against the grantee have been exhausted or are unavailing, and it only acquires its character of a specific encumbrance by the commencement of a suit to enforce it. In Gilman v. Brown, 1 Mason, 191, Mr. Justice Story said: "It is, in short, a right which has no existence until it is established by the decree of a court in the particular case." In Hutton v. Moore, 26 Ark. 382, the court said: "His lien is an individual equity, of no force until declared by a court of equity"; and see Campbell v. Rankin, 28 Ark. 401, 406; Moore v. Anders, 14 Ark. 628, 634; 60 Am. Dec. 551.

plete legal title a lien, is certainly a misnomer. In case of a conveyance, the grantor has a lien, but no title. In case of a contract for sale before conveyance, the vendor has the legal title, and has no need of any lien; his title is a more efficient security, since the vendee cannot defeat it by any act or transfer even to or with a *bona fide* purchaser.¹

¹ This true nature of the vendor's interest is fully recognized by numerous decisions even while they use the ordinary term of "vendor's lien" in designating that interest. In some of the cases, however, the essential distinction between the grantor's and the vendor's position seems to have been overlooked. The recent case of *Vail v. Drexel*, 9 Ill. App. 439, presents the doctrine in a very clear, correct, and instructive manner, while using the accustomed phraseology: "Under an agreement for the sale of land, the vendor has an equitable lien on the property for unpaid purchase-money. In equity the vendee is considered the owner. The lien of the vendor is *in rem*, and he may resort to equity in the first instance to enforce it, without first resorting to a suit at law to recover the amount due." See also *McCaslin v. State*, 44 Ind. 151; *Moore v. Anders*, 14 Ark. 628, 634; 60 Am. Dec. 551; *Hutton v. Moore*, 26 Ark. 382; *Pitts v. Parker*, 44 Miss. 247; *Wells v. Smith*, 44 Miss. 296; *Driver v. Hudspeth*, 16 Ala. 348; *Reese v. Burts*, 39 Ga. 565; *Hines v. Perkins*, 2 Heisk. 395; *Sparks v. Hess*, 15 Cal. 186, 194, per Field, J.; *Church v. Smith*, 39 Wis. 492, 493, per Lyon, J. [See also *Lowery v. Peterson*, 75 Ala. 109; *Moses v. Johnson*, 88 Ala. 517; 16 Am. St. Rep. 58; *Gessner v. Palmar*, 89 Cal. 89; *Robinson v. Appleton*, 124 Ill. 276; *Poe v. Paxton*, 26 W. Va. 607; *White v. Blakemore*, 8 Lea, 49; *Hale v. Baker*, 60 Tex. 217; *Ransom v. Brown*, 63 Tex. 188; *Beatrice v. Dickinson*, 39 Ark. 205 (vendee cannot impair vendor's security).] The exact positions of the vendor and vendee have been described by most eminent English judges in recent cases, and their opinions are very instructive. In *McCreight v. Foster*, L. R. 5 Ch. 604, 610, Lord Hatherley said: "It is quite true that authorities

may be cited as establishing the proposition that the relation of trustee and *cestui que trust* does in a certain sense exist between vendor and purchaser; that is to say, when a man agrees to sell his estate, he is trustee of the legal estate for the person who has purchased it, *as soon as the contract is completed, but not before*." This case *sub nom.* *Shaw v. Foster*, L. R. 5 H. L. 321, was decided on appeal by the house of lords, and all of the law lords delivered opinions. Lord Chelmsford said (p. 333): "According to the well-known rule in equity, when the contract for sale was signed by the parties, Sir W. Foster [the vendor] became a trustee of the estate for Pooley [the vendee], and Pooley a trustee of the purchase-money for Sir W. Foster." Lord Cairns said (p. 338): "Under these circumstances, I apprehend there cannot be the slightest doubt of the relation subsisting in the eye of a court of equity between the vendor and the purchaser. The vendor was a trustee of this property for the purchaser; the purchaser was the real beneficial owner, in the eye of a court of equity, of the property, subject only to this observation, that the vendor, whom I have called the trustee, was not a mere dormant trustee, — he was a trustee having a personal and substantial interest in the property, a right to protect that interest, and an active right to assert that interest if anything should be done in derogation of it. The relation, therefore, of trustee and *cestui que trust* subsisted, but subsisted subject to the paramount right of the vendor and trustee to protect his own interest as a vendor of the property." That interest, Sir George Jessel says, in a subsequent case, is synonymous with the ordinary term, the "vendor's lien" or charge. Lord O'Hagan said (p. 349): "By the contract of sale the vendor,

§ 1261. **Essential Nature and Effects.**—In fact, the position of the vendor prior to conveyance is defined

in the view of the court of equity, disposes of his right over the estate, and on the execution of the contract he becomes *constructively* a trustee for the vendee, who is thereupon, on the other side, bound by a trust for the payment of the purchase-money." Lord Hatherley said (p. 356): "The moment that a contract for sale and purchase is entered into, and the relation of vendor and vendee is constituted, the vendor becomes a *constructive* trustee for the vendee. *It is but a constructive trust.*" In *Rose v. Watson*, 10 H. L. Cas. 672, 678, Lord Westbury said: "When the owner of an estate contracts with a purchaser for the immediate sale of it, the ownership of the estate is *in equity* transferred by that contract." In *Wall v. Bright*, 1 Jacob & W. 494, 508, the master of rolls said: "The vendor is not a *mere* trustee; he is in progress towards it, and finally becomes such when the money is paid, and when he is bound to convey." These extracts show that the ablest judges have found it very difficult to formulate a statement which should exactly reconcile the idea of the vendor having merely a lien with the notion of his being a trustee. In the recent case of *Lysaght v. Edwards*, L. R. 2 Ch. Div. 499, 506, 507, Sir George Jessel, M. R., states the effect of a contract for the sale of land as follows: "It appears to me that the effect of a contract for sale has been settled for more than two centuries; certainly it was completely settled before the time of Lord Hardwicke, who speaks of the settled doctrine of the court as to it. What is that doctrine? It is that the moment you have a valid contract for sale the vendor becomes in equity a trustee for the purchaser of the estate sold, and the beneficial ownership passes to the purchaser, the vendor having a right to the purchase-money, a charge or lien on the estate for the security of that purchase-money, and a right to retain possession of the estate until the purchase-money is paid, in the absence of express contract as to the time of delivering possession. In other words, the position of the vendor is something between what has

been called a naked or bare trustee (that is, a person without beneficial interest), and a mortgagee who is not, in equity (any more than a vendor), the owner of the estate, but is, in certain events, entitled to what the unpaid vendor is, viz., possession of the estate, and a charge upon the estate for his purchase-money. Their positions are analogous in another way. The unpaid mortgagee has a right to foreclose,—that is to say, he has the right to say to the mortgagor, 'Either pay me within a limited time, or you lose your estate,' and in default of payment he becomes absolute owner of it. So although there has been a valid contract of sale, the vendor has a similar right in a court of equity; he has a right to say to the purchaser, 'Either pay me the purchase-money or lose the estate.' Such a decree has sometimes been called a decree for cancellation of the contract; time is given by a decree of the court of equity; and if the time expires without the money being paid, the contract is canceled by the decree or judgment of the court, and the vendor becomes again the owner of the estate [i. e., equitable as well as legal owner]. But that, as it appears to me, is a totally different thing from the contract being canceled, because there was some equitable ground for setting it aside." The judge goes on to discuss the meaning of "valid contract" for the sale of land, when such contract is valid and binding, and then proceeds: "Being a valid contract, it has this remarkable effect, that it converts the estate, so to say, in equity; it makes the purchase-money a part of the personal estate of the vendor, and it makes the land a part of the real estate of the vendee; and therefore all those cases on the doctrine of constructive conversion are founded simply on this, that a valid contract actually changes the ownership of the estate in equity. That being so, is the vendor less a trustee because he has the rights which I have mentioned? I do not see how it is possible to say so. If anything happens to the estate between the time of sale and the time of completion of the purchase, it is at the

and determined by the doctrine of equitable conversion, rather than by that of mere equitable lien. He holds the legal title as security for the performance of the vendee's obligation, and as trustee for the vendee, subject to such performance, and that title may be conveyed or devised, and will descend to his heirs. In equity, his real interest is personal estate; he becomes by equitable conversion the owner of the purchase-money, of which the vendee is his trustee, and this claim for the purchase-money passes on his death to his executors or administrators. On the other hand, the vendee becomes, by conversion, the real beneficial, although equitable, owner of the land; his interest under the contract is, in equity, real estate, and descends to his heirs. The so-called lien of the vendor is only another mode of expressing his equitable interest thus arising from the doctrine of conversion; and so far as it has any distinctive signification, it simply means

risk of the purchaser. If it is a house that is sold, and the house is burned down, the purchaser loses the house. In the same way there is a correlative liability on the part of the vendor in possession. He is not entitled to treat the estate as his own. If he willfully damages or injures it, he is liable to the purchaser; and *more* than that, he is liable if he does not take reasonable care of it. So far he is treated in all respects as a trustee, subject, of course, to his right to be paid the purchase money, and his right to enforce his security against the estate." See also *Morgan v. Swansea* etc. Authority, L. R. 9 Ch. Div. 582, 584. To these admirable expositions nothing need be added by way of comment. They show that the notion of the vendor's lien is simply another mode of expressing the settled doctrine of conversion wrought by a contract for the sale of land. In equity the vendee is regarded as the real beneficial owner, even though he has not paid the purchase price; the vendor holds the legal estate as trustee, and when the terms of the contract are complied with, he is bound to convey. Until those terms are complied with, the legal title remains in the vendor

as his security; or, as it is otherwise expressed, he has alien upon the vendee's equitable estate as security for payment of the purchase-money according to the terms of the agreement. Practically, this lien consists in the vendor's right to enforce payment of the price, by a suit in equity against the vendee's equitable estate in the land, instead of by means of an ordinary action at law to recover the debt. In England the vendor's equitable remedy consists in a suit in the nature of a strict foreclosure, by which the vendee is decreed to pay the price within a limited time, and in default of such payment the contract is canceled, the vendee's equitable estate is foreclosed, and the vendor's legal estate becomes again absolute. In the United States the same mode of enforcing the lien by a suit in the nature of a strict foreclosure is pursued. Another mode seems to be recognized, at least in some of the states, by which the vendee's equitable estate under the contract is sold in pursuance of a judicial decree. Such a sale would operate as an assignment of the vendee's rights under the contract, and would not be a cancellation of the contract itself.

his right of enforcing his claim for the purchase-money against or out of the vendee's equitable estate by means of a suit in equity.¹

§ 1262. **How Enforced.**—The equity action to enforce the so-called lien is simply an action to compel the vendee to make payment of the purchase price within a specified time, or else be barred of all rights under the contract,—that is, an action to foreclose the contract. In actions at law to recover the purchase price, it is the

¹ See *ante*, vol. 1, §§ 368, 372, and cases cited; also cases in last preceding note; *Lewis v. Hawkins*, 23 Wall. 119; *Lingan v. Henderson*, 1 Bland. 236; *Tuck v. Calvert*, 33 Md. 209; *Richards v. Fisher*, 8 W. Va. 55; *Hadley v. Nash*, 69 N. C. 162; *Harvill v. Lowe*, 47 Ga. 214; *Scroggins v. Hoadley*, 56 Ga. 165; *Relfe v. Relfe*, 34 Ala. 500, 504; 73 Am. Dec. 467; *Shinn v. Taylor*, 28 Ark. 523; *Lewis v. Boskins*, 27 Ark. 61; *Holman v. Patterson's Heirs*, 29 Ark. 357; *Cochran v. Wimberly*, 44 Miss. 503; *Money v. Dorsey*, 7 Smedes & M. 15, 22; *Taylor v. Eckford*, 11 Smedes & M. 21; *Roberts v. Francis*, 2 Heisk. 127; *Carter v. Sims*, 2 Heisk. 166; *Cleveland v. Martin*, 2 Head, 128; *Sitz v. Deihl*, 55 Mo. 17; *Seitz v. Union Pac. R'y*, 16 Kan. 133; *Smith v. Moore*, 26 Ill. 392; *Greene v. Cook*, 29 Ill. 186; *Grove v. Miles*, 58 Ill. 338; 71 Ill. 376; *Button v. Schroyer*, 5 Wis. 598; *Merritt v. Judd*, 14 Cal. 59; *Purdy v. Bullard*, 41 Cal. 444. [See also *Walker v. Crawford*, 70 Ala. 567; *Moses v. Johnson*, 88 Ala. 517; 16 Am. St. Rep. 58; *Hardin v. Boyd*, 113 U. S. 756; *Wells v. Francis*, 7 Col. 396; *White v. Blakemore*, 8 Lea, 49.]

The following recent cases illustrate some particular points decided with respect to this lien: *Waiver*: It is not, in general, waived by the taking of other security for the purchase price, whether personal or on land; in this respect it differs from the "grantor's lien": *Sehorn v. McWhirter*, 6 Baxt. 311, 313; *Warren v. Branch*, 15 W. Va. 21; *Bozeman v. Ivey*, 49 Ala. 75; *McCaslin v. State*, 44 Ind. 151; *Day v. Hale*, 22 Gratt. 146; [also *Robinson v. Appleton*, 124 Ill. 276; *Rogers v. Blum*, 56 Tex. 1;] but see *Hollis v.*

Hollis, 4 Baxt. 524; [*Avery v. Clark*, 87 Cal. 619, 626; 22 Am. St. Rep. 272 ("waived" by mortgage).] If the vendee has fully performed all of the contract on his part, he is, of course, entitled to a conveyance, even though the purchase price remains partly unpaid; and this, it seems, is what some of the cases mean by "waiving the lien." [See also *Sykes v. Betts*, 87 Ala. 537 (when the consideration is uncertain, as on sale of real and personal property for a gross sum, no presumption that the retention of the legal title is for the purpose of security).] *Priority*: On principle, the vendor's right should have priority over subsequent judgments recovered against the vendee, irrespective of the question of notice, since he retains the legal title; his position in this respect is entirely different from that of the grantor: *Grubbs v. Wisors*, 32 Gratt. 127; *Shipe v. Repass*, 28 Gratt. 716; *Wooten v. Bellinger*, 17 Fla. 289; *Paris Exch. Bank v. Beard*, 49 Tex. 358; *Jones v. Sackett*, 36 Mich. 192. [See also § 721, notes.] *Assignment*: When notes are given for the price, and these notes are assigned, the lien passes, and may be enforced by the assignee: *Martin v. O'Bannon*, 35 Ark. 62; [also *Lowery v. Peterson*, 75 Ala. 109; *Gessner v. Clark*, 89 Cal. 89; *Russell v. Kirkbride*, 62 Tex. 455; *Murphree v. Countiss*, 58 Miss. 712 (not defeated in hands of assignee by vendee's subsequent reception of a deed from the vendor); as to subrogation, see *Beattie v. Dickinson*, 39 Ark. 205;] but the assignee obtains no higher rights: he takes subject to defenses; and if the lien had been otherwise destroyed, he cannot enforce it: *McMillen v. Rose*, 54 Iowa, 522.

uniform rule that the vendor must allege and show that he has tendered a conveyance in pursuance of the terms of the contract. Whether such tender of a deed is a prerequisite to the vendor's maintaining his suit in equity, is a question upon which the American decisions are in direct conflict, and the authorities do not seem to preponderate decidedly in favor of either view.¹

§ 1263. **The Vendee's Lien.** — The lien of the vendee under a contract for purchase of land for the purchase-money paid by him before a conveyance is the exact counterpart of the grantor's — or, as it is commonly called, the vendor's — lien, described in the last section but one. In the latter case, the legal title has been conveyed to the grantee, and yet the grantor retains an equitable lien upon the land as security for the purchase price agreed to be paid. In the former case, the legal title remains in the vendor, who has simply agreed to convey, while the vendee, although having as yet acquired no legal interest in the land by virtue of the contract, does obtain a lien upon it as security for the purchase-money he has paid, and for the performance of the vendor's obligation to convey.² In England, therefore, and in the American

¹ The following cases hold that no tender of a deed by the vendor is necessary: *Freeson v. Bissell*, 63 N. Y. 163 (but compare *Thomson v. Smith*, 63 N. Y. 301); *Church v. Smith*, 39 Wis. 492; *De Forest v. Holum*, 38 Wis. 516; *McKenzie v. Baldrige*, 49 Ala. 564. *Per contra*, such a tender is necessary: *Cole v. Wright*, 50 Ind. 296; *McCaslin v. State*, 44 Ind. 151; *Turner v. Lassiter*, 27 Ark. 662; *Wakefield v. Johnson*, 26 Ark. 506; *Klyce v. Broyles*, 37 Miss. 524; and the same rule is stated in *Sugden on Vendors*. In *Thomson v. Smith*, 63 N. Y. 301, it was held that the administrators or executors of a deceased vendor could not maintain the action without alleging a tender, or that they are ready, willing, and able to give a deed, unless the person vested with the title, the heir or devisee, is also made a party to the suit so as to be bound by the judgment. The case

was distinguished on these facts from *Freeson v. Bissell*, *supra*. It is not necessary that the vendor should first exhaust his legal or other remedies: *Vail v. Drexel*, 9 Ill. App. 439; *McCaslin v. State*, *supra*; *Sehorn v. McWhirter*, 6 Baxt. 311, 313. Where a note for purchase-money has been assigned, the assignee may not only enforce the lien against the vendee, but may have appropriate relief against the vendor-assignor: *Church v. Smith*, 39 Wis. 492; as to enforcement of plaintiff's judgment against rents due the vendee, etc., see *Seat v. Knight*, 3 Tenn. Ch. 262; for remedy by judicial sale as in the ordinary foreclosure of a mortgage, see *Bruce v. Tilson*, 25 N. Y. 194.

² The lien exists, of course, only where the vendor is unable or refuses to perform his contract so that the vendee can recover back the purchase-money paid. It does not arise where

states where the grantor's lien has been adopted, the vendee's lien upon the lands contracted to be sold as a security for so much of the purchase price as he has paid prior to a conveyance, and for the performance by the vendor of his obligation, exists to the same extent against the same classes of persons, and governed by the same rules, as the corresponding lien of the grantor. The lien only arises, of course, when the vendor is in some default for not completing the contract according to its terms, and the vendee is not in default so as to prevent him from recovering the purchase-money paid.

SECTION VII.

ARISING FROM A DEPOSIT OF TITLE DEEDS.

ANALYSIS.

- § 1264. The English doctrine.
- § 1265. The doctrine in the United States.
- § 1266. Distinction suggested as a conclusion from American cases.
- § 1267. How this lien is enforced.

§ 1264. **English Doctrine.**—It is a well-settled doctrine of the English equity that a deposit of title deeds as a security for the payment of money, without any

the contract is illegal, nor where the vendee himself is in default by abandoning the contract: *Cator v. Earl of Pembroke*, 1 Brown Ch. 301; *Wythes v. Lee*, 3 Drew. 396, 406; *Ewing v. Osbaldiston*, 2 Mylne & C. 53, 88; *Dinn v. Grant*, 5 De Gex & S. 451; *Rose v. Watson*, 10 H. L. Cas. 672; *Turner v. Marriott*, L. R. 3 Eq. 744; *Torrance v. Bolton*, L. R. 14 Eq. 124; *Aberaman Ironworks v. Wickens*, L. R. 4 Ch. 101; 5 Eq. 485; *Lane v. Ludlow*, 2 Paine, 591; *Chase v. Peck*, 21 N. Y. 581; *Clark v. Jacobs*, 56 How. Pr. 519; *Wright v. Dufield*, 2 Baxt. 218; *Flinn v. Barber*, 64 Ala. 193; *Stewart v. Wood*, 63 Mo. 252; *Cooper v. Merritt*, 30 Ark. 686; *Shirley v. Shirley*, 7 Blackf. 452; *Brown v. East*, 5 Mon. 405, 407; *Wickman v. Robin-*

son, 14 Wis. 493; 80 Am. Dec. 789; *Anderson v. Spencer*, 51 Miss. 869; *Hughes v. Hatchett*, 55 Ala. 539. [See also *Stults v. Brown*, 112 Ind. 370; 2 Am. St. Rep. 190; *Felkner v. Tighe*, 39 Ark. 357; *Small v. Small*, 16 S. C. 64.] The lien prevails against a subsequent grantee or mortgagee of the vendor with notice: *Rose v. Watson*; *Clark v. Jacobs*; *Stewart v. Wood*. The Civil Code of California adopts this lien: "Sec. 3050: One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back in case of a failure of consideration."

agreement, either verbal or written, to give a mortgage, creates an equitable lien, or, as it is ordinarily called, an equitable mortgage, on the estate of the debtor of which the deeds constitute in whole or in part the title. The exact significance and effect of the transaction is, that the debtor thereby contracts that his estate in the land shall be liable for the debt, and that he will execute such mortgage or conveyance as may be necessary to convey the estate to the creditor as security for the payment. The lien thus created is good between the parties, and as against all subsequent purchasers or encumbrancers of the depositor who are affected with notice of the transaction, and all persons holding under him as volunteers.¹

¹ *Russel v. Russel*, 1 Brown Ch. 269; 1 Lead. Cas. Eq., 4th Am. ed., 931; *Pye v. Daubuz*, 2 Dick. 759; *Ex parte Whitbread*, 19 Ves. 209; *Ex parte Wright*, 19 Ves. 255; *Ex parte Hooper*, 1 Mer. 7; *Ex parte Kensington*, 2 Ves. & B. 79; *Parker v. Housefield*, 2 Mylne & K. 419; *Pryce v. Bury*, 2 Drew. 41, 42; *Lacon v. Allen*, 3 Drew. 579; *Whitbread v. Jordan*, 1 Younge & C. 303; *National Bank of Australia v. Cherry*, L. R. 3 P. C. 299. A deposit once made may be extended so as to include further advances in pursuance of a subsequent parol agreement: *Ex parte Kensington*, 2 Ves. & B. 79, 84; *Ex parte Langston*, 17 Ves. 227; *Baynard v. Woolley*, 20 Beav. 583.

English judges have explained the doctrine in different modes, sometimes referring it wholly to precedent, as in *Lacon v. Allen*, 3 Drew. 579, 582, per *Kindersley*, V. C.; and sometimes endeavoring to find a basis of principle for it, as in *Keys v. Williams*, 3 Younge & C. 55, 61, per *Lord Abinger*. As a matter of fact, the doctrine rests upon the peculiar law and practice of England with reference to conveyancing, and to the use of deeds as evidence of ownership. There is no general system of registration; the possession of deeds is an evidence of ownership; they or their abstracts are exhibited to the intended purchaser for examination in every negotiation for a sale; they are delivered to the grantee almost as a

matter of course in all transfers of the fee; no transfer can safely be made without them; and no one is supposed to have a right to their possession unless he has some claim upon the land or estate which they represent. Whenever a supposed owner offers his estate for sale or mortgage, he must produce his title deeds, and their absence from his possession, when demanded, inevitably casts a suspicion on his title, and puts the other party upon an inquiry. The doctrine, therefore, has some natural basis of fact in England, and does not produce the difficulties in its actual operation which it would necessarily cause in this country, where the records of deeds, and not the deeds themselves, are the real evidence and security of title and ownership. A prior equitable lien created by a deposit of title deeds is superior to all subsequent claims of mere volunteers, and of parties acquiring rights under the depositor with actual or constructive notice of the lien. The important points which arise in practice are generally connected with this matter of priority, and involve the question as to what constitutes notice to a subsequent mortgagee or other encumbrancer. This subject has already been discussed, and the conclusions of the latest English cases given *ante*, in § 612. As the same conditions of fact do not arise in this country, and the rules are valuable here only by analogy, it does

§ 1265. **The Doctrine in the United States.**—The basis of fact which exists in England, as described in the foot-note, is not found in our law or our practice; and as the doctrine is opposed to all our modes of treating real estate, and especially to our system of registry, it was inevitable that the doctrine of an equitable lien, resulting from a mere deposit of title deeds with a creditor, should not meet with any general and practical acceptance throughout the United States. Under our system of recording, there is no necessity for the production, nor even for the preservation, of the original title deeds; owners look to the records as furnishing the real evidence of title, and as exhibiting the true condition of all interests in and claims upon the land which could affect the rights of purchasers or encumbrancers; and to the records all parties go, as a matter of course, even in preference to the original deeds.¹ In fact, no presumption or inference would, in general, be raised from the mere possession of title deeds by a stranger. It follows that in several of the states, where the question has been judicially examined, the doctrine has been distinctly repudiated or not adopted, as being wholly inconsistent with our statutory system of registry and methods of conveying.² In a few cases, however, the English doctrine

not seem necessary to go into any further examination of the numerous English decisions. The following cases illustrate these questions: *Turner v. Letts*, 7 De Gex, M. & G. 243; *Roberts v. Croft*, 2 De Gex & J. 1; *Perry Herriek v. Attwood*, 2 De Gex & J. 21; *Layard v. Maud*, L. R. 4 Eq. 397; *Newton v. Newton*, L. R. 6 Eq. 135; 4 Ch. 143; *Thorpe v. Holdsworth*, L. R. 7 Eq. 139; *Briggs v. Jones*, L. R. 10 Eq. 92; *In re Durham etc. Soc.*, L. R. 12 Eq. 516; *Maxfield v. Burton*, L. R. 17 Eq. 15; *Waldy v. Gray*, L. R. 20 Eq. 238; *Ratcliffe v. Barnard*, L. R. 6 Ch. 652; *Dixon v. Muckleston*, L. R. 8 Ch. 155; *Burton v. Gray*, L. R. 8 Ch. 932; *Ex parte Holthausen*, L. R. 9 Ch. 722; *In re Trethowan*, L. R. 5 Ch. Div. 559; *Keate v. Phillips*, L. R. 18 Ch.

Div. 560; *In re Morgan*, L. R. 18 Ch. Div. 93.

¹See *Probasco v. Johnson*, 2 Disn. 96, 98.

²*Bicknell v. Bicknell*, 31 Vt. 498; *Shitz v. Dieffenbach*, 3 Pa. St. 233; *Thomas's Appeal*, 30 Pa. St. 378; *Edwards's Ex'rs v. Trumbull*, 50 Pa. St. 509; *Bowers v. Oyster*, 3 Penn. & W. 239; *Probasco v. Johnson*, 2 Disn. 96; *Bloom v. Noggle*, 4 Ohio St. 45, 56; *Vanmeter v. McFaddin*, 8 B. Mon. 435, 438; *Meador v. Meador*, 3 Heisk. 562; *Gothard v. Flynn*, 25 Miss. 58; [*Lehman v. Collins*, 69 Ala. 127;] but compare, *per contra*, *Williams v. Stratton*, 10 Smedes & M. 418. [See also *Hutzler v. Phillips*, 26 S. C. 136; 4 Am. St. Rep. 687.]

has been recognized, treated as a subsisting rule of equity jurisprudence, and acted upon. It cannot be affirmed, in my opinion, notwithstanding these decisions, that the rule has been firmly established in either one of the states where the decisions were made; their authority is hardly sufficient to be considered as having finally settled the question in accordance with their views.¹

§ 1266. **Distinction Suggested.** — From a comparison of these decisions I venture to suggest a distinction which may partially reconcile the American cases, and may furnish a rule which would perhaps be accepted as correct in nearly all the states. In the first place, a deposit of title deeds with the creditor as security for an indebtedness, even without any accompanying express agreement, certainly means *something*; it is not a mere empty form;

¹ Hackett v. Reynolds, 4 R. I. 512; Rockwell v. Hobby, 2 Sand. Ch. 9; Griffin v. Griffin, 18 N. J. Eq. 104; Welsh v. Usher, 2 Hill Eq. 167, 170; 29 Am. Dec. 63, per Harper, J.; Williams v. Stratton, 10 Smedes & M. 418, 426; Mowry v. Wood, 12 Wis. 413; Jarvis v. Dutcher, 16 Wis. 307; First Nat. Bank v. Caldwell, 4 Dill. 314. In Rockwell v. Hobby, *supra*, the decision was by the assistant vice-chancellor, who said: "In absence of all other proof, the evidence of an advance of money, and the finding of the deeds of the borrower in the possession of the lender, is held to establish an equitable mortgage. In the case before me, the deed went into the possession of the testator [the creditor] for some purpose. None is specifically proved; but there is an advance of money proved,—an advance which went to discharge a mortgage given in truth for a part of the purchase-money of the land described in that deed. The only inference is, that the deed was deposited as a security for such advance." This is the decision of an inferior local equity court, but of an undoubtedly able judge; and although it has been frequently cited by text-writers, it certainly cannot be regarded as having finally established the full English doctrine as a part of the law in New York. The same is true of Welsh v. Usher, *supra*, in which Harper, J., admitted

the doctrine as existing, but this can hardly establish the rule for South Carolina. In Griffin v. Griffin, *supra*, the chancellor of New Jersey went somewhat further, and said that "courts of equity in England and in this country have for many years recognized the validity of an equitable mortgage by the deposit of title deeds by a debtor with his creditor as security for the repayment of a debt, and have held that the mere fact that a creditor was in possession of the title deeds raised the presumption that they were deposited as a security for the debt, and created an equitable mortgage." It should be observed that this decision was made with reference to New York law. Hackett v. Reynolds, *supra*, goes to the full length of holding that the deposit of title deeds creates an equitable lien or mortgage as between the original parties and other persons subject to their equities, and that the courts will establish this lien, and enforce a sale of the depositor's interest and also of the interest of third persons who are subject to the lien. In Williams v. Stratton, 10 Smedes & M. 418, 426, the question was fully discussed, and the English doctrine admitted to exist, although not applied to the facts of the case. This admission has, however, been overruled in the subsequent case of Gothard v. Flynn, 25 Miss. 58.

it creates some right both at law and in equity. It is a pledge of *the deeds themselves*, valid between the parties. The depositor cannot recover the instruments in a legal action until he has paid the debt; and a court of equity will give him no relief until he has done equity to his creditor by discharging the obligation which the deposit was intended to secure. What is thus a pledge of the deeds themselves at law might be regarded in equity as a lien upon the land described in the deeds. It would be carrying out the evident intention of the parties, and would be in complete harmony with our established system of titles, of conveyancing, and of registration, to permit the mere deposit of title deeds as security, without further express agreement, to create an equitable lien on the land, valid and enforceable between the original parties, as against the debtor himself. To this extent the lien created by the deposit might be admitted in all the states.¹ On the other hand, such a lien operating against third persons, as grantees or encumbrancers, even those who have dealt concerning the property with actual notice of the deposit, is an entirely different matter, and is plainly irreconcilable with our methods of conveyancing and system of recording, and does not constitute a doctrine of American equity as it is administered in nearly all of the states. In the second place, another distinction is important to be noticed. The theory of an equitable lien resulting from a deposit of title deeds assumes a simple deposit as security without any express agreement in writing; and, as we have seen, the English equity *implies* an agreement to give a mortgage. If the deposit should be accompanied by a written agreement expressly stipulating that the debt should be secured by or be a charge on the land described in the deeds, or that the transaction should amount to such a security or charge, this agreement would, under the principles of

¹Griffin v. Griffin, 18 N. J. Eq. doctrine do not intend to go further
104. It is probable that most of the than this limited operation of the
American cases which sanction the rule.

equity prevailing throughout the entire country, constitute an equitable lien on the land itself.¹ In fact, such an agreement would create a lien independent of any deposit, since it would fall within the general doctrines heretofore stated concerning equitable liens arising from executory contracts.²

§ 1267. **How Enforced.** — If the lien exists in any of the states, its proper mode of enforcement seems to be by a suit in equity and a decree for the sale of the land subjected to it, although in England the ordinary remedy is by a suit for a strict foreclosure cutting off the right of redemption.³

SECTION VIII.

VARIOUS STATUTORY LIENS.

ANALYSIS.

§ 1268. General nature and tendency of American legislation on this subject; various examples.

§ 1269. How such liens are enforced.

§ 1268. **General Nature of American Legislation on This Subject.** — In addition to the foregoing liens which belong to the general equity jurisprudence, the legislation of many states has created or allowed a variety of other liens, the enforcement of which often comes within the equity jurisdiction, and has thus enlarged its scope as administered throughout a large portion of our country. This legislation differs so much in its details that I shall not attempt to give any circumstantial description of it, nor any abstract of the statutes themselves. The liens are sometimes charged upon real estate and sometimes upon

¹ Luch's Appeal, 44 Pa. St. 519; Edwards's Ex'rs v. Trumbull, 50 Pa. St. 509.

² See *ante*, §§ 1235, 1237.

³ Hackett v. Reynolds, 4 R. I. 512; Mowry v. Wood, 12 Wis. 413; Jarvis v. Dutcher, 16 Wis. 307. The English remedy proceeds upon the notion that the deposit is, in effect, an agree-

ment to give an ordinary legal mortgage; the relief, therefore, is the same as that ordinarily given in case of a legal mortgage: Backhouse v. Charlton, L. R. 8 Ch. Div. 444; Carter v. Wake, L. R. 4 Ch. Div. 605; James v. James, L. R. 16 Eq. 153; Pryce v. Bury, L. R. 16 Eq. 153, note.

chattels. Their general object is the protection of those who, by their labor, services, skill, or materials furnished, have enhanced the value of the specific property, which thus becomes subject to the lien as security for their compensation. The most familiar instance, which may be taken as the type of the whole class, is that known as the "mechanic's lien," found under some form in nearly every state.¹

§ 1269. **How Enforced.**—Many of these liens are enforced by purely legal actions, and their effect resembles that produced by a legal attachment, enabling the lienor to retain or recover possession of the thing, and to sell it at execution sale upon the judgment. Others are enforced by special proceedings authorized and regulated by statute. These two classes have no equitable character, and do not come within the scope of equity jurisdiction. In some of the states, however, these liens, especially those charged upon real estate, as mechanics' liens, mining liens, and the like, are enforced by ordinary equitable actions, resulting in a decree for a sale and distribution of the proceeds, identical in all their features with suits for the foreclosure of mortgages by judicial sale.² It is true that these liens, being created by statute, are *legal* in their essential nature, rather than equitable; but so far as they

¹ It has been the policy in many states to protect in this manner those employed in their peculiar local industries. In the Northwestern states, where lumbering is an important industry, a lien on logs is given to those engaged in "booming," or in cutting trees, and on lumber, to those engaged in sawing. In the mining states and territories of the Pacific coast, a system of liens exists on mines, mining-sites, and mineral products, in favor of those engaged in working, "prospecting," or "locating" them. In Southern states, a lien on the plantations, or products thereof, is given to those who by their materials or services aid in raising crops. There is also a strong tendency, especially in the Western states, to protect all artisans, workmen, laborers, etc., by such liens.

² Winslow v. Urquhart, 39 Wis. 260 (on logs); Ogg v. Tate, 52 Ind. 159 (mechanics); Ball v. Vason, 56 Ga. 264 (crops and land); Watson v. Columbia Bridge Co., 13 S. C. 433 (mechanics); Gaskill v. Davis, 63 Ga. 645 (same); Lawton v. Case, 73 Ind. 60; Cummings v. Halsted, 26 Minn. 151; Willer v. Bergenthal, 50 Wis. 474 (action is equitable); Spink v. McCall, 52 Iowa, 432; Phillips v. Gilbert, 101 U. S. 721; Burroughs v. Tostevan, 75 N. Y. 567; Kealing v. Voss, 61 Ind. 466; [De la Vergne etc. Co. v. Mont'y Brewing Co., 46 Fed. Rep. 829 (action is equitable).] These cases are cited merely as illustrations of actions, equitable in their nature, for the enforcement of such liens.

are enforced by equitable actions, they have added a peculiar element to the equity *jurisdiction* in several states. It is no part of my design to discuss the rules governing the existence, scope, and operation of such statutory liens; and the general reference is made to them in order to complete a survey of the liens which belong to equity jurisprudence or may fall under the equity jurisdiction.

CHAPTER EIGHTH.

ESTATES AND INTERESTS ARISING FROM ASSIGNMENTS.

SECTION I.

ASSIGNMENTS OF THINGS IN ACTION.

ANALYSIS.

- § 1270. Original doctrines at law and in equity.
- § 1271. *Rationale* of the equitable doctrine.
- § 1272. Assignment of things in action at common law.
- § 1273. The same; under statutory legislation.
- § 1274. Interpretation of this legislation as contained in the reformed procedure.
- § 1275. What things in action are or are not thus *legally* assignable.
- § 1276. Assignments forbidden by public policy.
- § 1277. The equitable jurisdiction; under the reformed procedure.
- § 1278. The equitable jurisdiction; under the common-law procedure.
- § 1279. Incidents of an assignment.

§ 1270. **Original Doctrines at Law and in Equity.**— By the ancient common law, things in action, expectancies, possibilities, and the like were not assignable; an assignee thereof acquired no right which was recognized by a court of law, for the act of assignment was regarded as against public policy, if not actually illegal. Lord Coke states this doctrine as one of the peculiar excellencies of the system which he called the “perfection of human wisdom,” but which was at his day in many respects semi-barbarous.¹ The court of chancery from an early day rejected this rule as narrow and even absurd. Acting

¹ *Lampet's Case*, 10 Coke, 46 b, 48 a: “The great wisdom and policy of the sages and founders of our law have provided that no possibility, right, title, nor thing in action shall be granted or assigned to strangers; for

that would be the occasion of multiplying of contentions and suits, of great oppression of the people, and the subversion of the due and equal execution of justice!”

upon the principle that a man may bind himself to do anything not impossible, and that he ought to perform his obligations when not illegal, equity has always held that the assignment of a thing in action for a valuable consideration should be enforced;¹ and has also given effect to assignments of every kind of future and contingent interests and possibilities in real or personal property, when made upon a valuable consideration.² As soon as the assigned expectancy or possibility has fallen into possession, the assignment will be enforced.³

§ 1271. **Rationale of the Equitable Doctrine.** — It followed, therefore, that the assignee of an ordinary thing in action — a debt or demand arising out of contract — acquired at once an equitable ownership therein, as far

¹ Row v. Dawson, 1 Ves. Sr. 331; 2 Lead. Cas. Eq., 4th Am. ed., 153; Wright v. Wright, 1 Ves. Sr. 409, 411; Squib v. Wyn, 1 P. Wms. 378, 381.

² Warmstrey v. Lady Tanfield, 1 Ch. Rep. 29; 2 Lead. Cas. Eq. 1530; Goring v. Bickerstaff, 1 Ch. Cas. 4, 8; Jewson v. Moulson, 2 Atk. 417, 421; Wright v. Wright, 1 Ves. Sr. 409, 411; Spragg v. Binkes, 5 Ves. 583, 588; Stokes v. Holden, 1 Keen, 145, 152, 153; Hobson v. Trevor, 2 P. Wms. 191 (the mere expectancy of an heir at law); Bennett v. Cooper, 9 Beav. 252 (the possible interest which a person may take under the will of another who is still living); Lindsay v. Gibbs, 22 Beav. 522 (non-existing property to be acquired at a future time, — e. g., the expected cargo of a ship). The opinion of Lord Hardwicke in Wright v. Wright, *supra*, is a leading exposition of this equity doctrine. The interest assigned was a possibility under an executory devise. Lord Hardwicke said: "It is now established in this court that a *chose in action* may be assigned for valuable consideration; and this [the expectancy which was the subject-matter of the suit] may be released as a *chose in action* may; and then why may it not be put into such a shape as to be disposed of to a stranger, or to make him [the assignor] trustee for a stranger? This court admits the contingent interest of terms for years to be assigned for

valuable consideration, though the law does not; and further permits them to be disposed of by will, as in Wind v. Jekyl, 1 P. Wms. 572. . . . But this is said to be a contingent interest or possibility of inheritance, and there is no case of making that good; as to which there is no difference in the reason of the thing between that and the allowing of an assignment of a possibility of a personal thing or chattel real. The Trevor's Case, 2 P. Wms. 191, goes a great way. There was an agreement on marriage to settle all such lands as should come by descent or otherwise from his father, which this court carried into execution, notwithstanding an expectancy of an heir at law in the life of his ancestor is less than a possibility. In that case it was made good by way of agreement for valuable consideration. Then how does an assignment differ from it? An assignment always operates by way of agreement or contract, amounting, in the consideration of this court, to this, that one agrees with another to transfer and make good that right or interest, and, like any other agreement, the court will cause it to be specifically performed (not leaving the assignee to his action for damages for a breach), when the assignor is in a condition to transfer the property, or to cause it to be transferred, to the assignee."

³ Holroyd v. Marshall, 10 H. L. Cas. 191.

as it is possible to predicate *property* or *ownership* of such a species of right, while the assignee of an expectancy, possibility, or contingency acquired at once a present equitable right over the future proceeds of the expectancy, possibility, or contingency which was of such a certain and fixed nature that it was sure to ripen into an ordinary equitable *property right* over those proceeds as soon as they came into existence by a transformation of the possibility or contingency into an interest in possession. There was an equitable ownership or property in abeyance, so to speak, which finally changed into an absolute property upon the happening of the future event. Equity permitted the creation and transfer of such an ownership, while the original common law rejected every such notion. At an early day this species of equitable ownership arising from assignments prohibited by the common law was the occasion of an extensive branch of the equity jurisdiction. This former condition has, however, been greatly modified, and the special jurisdiction based upon it has become very much diminished.

§ 1272. **Assignment of Things in Action at Common Law.** — The *essential* validity of the assignments of legal things in action, and the equitable ownership of the assignees thereunder, had long been recognized by the law courts, which permitted the assignee suing in the name of the assignor to have entire control of the action and the judgment, and treated him as the only person having an immediate interest in the recovery.¹ In all ordinary cases, therefore, of assignment of legal things in action —

¹ The assignee was protected by the court from any interference with the action by the assignor in whose name as plaintiff on the record it was prosecuted; and after notice of the assignment to the debtor, any release to him by the assignor, or payment by him to the assignor, or other matter of discharge between them, was no defense to the action. In fact, the assignee's equitable interest was perfect, even in a court of law, except that he

could not sue in his own name. See an account of the law on this subject by Buller, J., in *Master v. Miller*, 4 Term Rep. 320, 340, 341; *Westoby v. Day*, 2 El. & B. 605, 624; *Edwards v. Parkhurst*, 21 Vt. 472; *Conway v. Cutting*, 51 N. H. 407; *Garland v. Harrington*, 51 N. H. 409; *Briggs v. Dorr*, 19 Johns. 95; *Raymond v. Squire*, 11 Johns. 47; *Johnson v. Bloodgood*, 1 Johns. Cas. 51; 1 Am. Dec. 93.

debts, and the like — the assignee had a complete and easy remedy at law, and the necessity of a resort to equity had ceased.¹

§ 1273. **The Same. Under Statutory Legislation.** — Statutes both in England and in the United States have gone much further, and, by allowing the assignee of things in action to sue at law in his own name, have made his interest or ownership to be legal, and no longer equitable. The earliest English statutes were confined to policies of insurance, permitting them to be legally assigned, so that the assignee could sue at law in his own name.² Finally, by the supreme court of judicature act, it was provided that debts and all other legal things in action may be assigned at law, if the assignment is in writing and absolute, and not by way of charge only.³ The legislation in many of the American states is much broader in its effects, though less specific in its language. In all the states and territories which have adopted the reformed procedure, abolishing the distinction between legal and equitable actions, and introducing one civil action for all purposes, it is provided that "every action must be prosecuted in the name of the real party in interest, except as otherwise provided in this statute."⁴

§ 1274. **Interpretation of This Legislation in the Reformed Procedure.** — It is the settled interpretation of this provision in all the commonwealths where the reformed procedure prevails, that whenever a thing in ac-

¹ *Hammond v. Messenger*, 9 Sim. 327; *Keys v. Williams*, 3 Younge & C. 462, 466, 467.

² 30 & 31 Vict., c. 144; 31 & 32 Vict., c. 86.

³ 36 & 37 Vict., c. 66, sec. 25, § 6.

⁴ The exceptions referred to embrace suits by executors, administrators, trustees of an express trust, and persons in whose names contracts are made for the benefit of others. See the following codes of procedure and practice acts: New York, sec. 111 (449 of new code); Indiana, sec. 3; Kansas, sec. 26; Minnesota, sec. 26;

Missouri, art. 1, sec. 2; Wisconsin, c. 122, sec. 12; Oregon, secs. 27, 379; Nevada, sec. 4; Kentucky, sec. 30; Washington, sec. 4; Montana, sec. 4; Ohio, sec. 25; California, sec. 367; Iowa, sec. 2543; Nebraska, sec. 29; Wyoming, sec. 22; Idaho, sec. 4; Dakota, sec. 74; Colorado, sec. 3; South Carolina, sec. 134; North Carolina, sec. 55. There are also special statutes in some of the states authorizing and regulating the assignment of things in action; e. g., Cal. Civ. Code, secs. 953, 954, 1427, 1428, 1457, 1458.

tion is assignable, the assignee thereof must sue upon it in his own name; and if the thing in action is itself legal, his right and interest under the assignment have been made legal. The provision itself does not render any thing in action assignable; it does not affect in any way the quality of assignability; it simply acts upon things in action which are assignable, and if they are legal in their nature, and if the assignment is one which would have been recognized in a court of law by permitting the assignee to sue in the name of the assignor, then the interest of the assignee is legal.¹

§ 1275. **What Things in Action are or are not thus Assignable.** — It becomes important, then, in fixing the scope of the equity jurisdiction, to determine what things in action may thus be legally assigned. The following criterion is universally adopted: All things in action which survive and pass to the personal representatives of a decedent creditor as assets, or continue as liabilities against the representatives of a decedent debtor, are, in general, thus assignable; all which do not thus survive, but which die with the person of the creditor or of the debtor, are not assignable. The first of these classes, according to the doctrine prevailing throughout the United States, includes all claims arising from contract express or implied, with certain well-defined exceptions; and those arising from torts to real or personal property, and from frauds, deceits, and other wrongs, whereby an estate, real or personal, is injured, diminished, or damaged. The second class embraces all torts to the person or character,

¹ See Pomeroy on Remedies, secs. 125-138, where the authorities sustaining the above conclusions are fully examined: *Devlin v. The Mayor*, 63 N. Y. 8; *Hardin v. Helton*, 50 Ind. 319; *Archibald v. Mutual Life Ins. Co.*, 38 Wis. 542. If the thing in action is a claim purely equitable in its nature, or if the assignment is one which courts of equity alone recognized, — as, for example, an order given upon a particular fund, or an assignment of

a part of a single demand, — then the assignee's interest is still equitable. A note or bill payable to order may be transferred without indorsement, and the transferee will obtain a good equitable title; such transfer is an equitable assignment: *Van Riper v. Baldwin*, 19 Hun, 344; *Hutchinson v. Simon*, 57 Miss. 628; *Norton v. Piscataqua Ins. Co.*, 111 Mass. 532; [*Bell v. Moon*, 79 Va. 341;] and see *ante*, cases in note under § 1148.

where the injury and damage are confined to the body and the feelings; and also those contracts, often implied, the breach of which produces only *direct* injury and damage, bodily or mental, to the person, such as promises to marry, injuries done by the want of skill of a medical practitioner, contrary to his implied undertaking, and the like;¹ and also those contracts, *so long as they are executory*, which stipulate solely for the special *personal* services, skill, or knowledge of a contracting party.²

¹ *Zabriskie v. Smith*, 13 N. Y. 322, 333; 64 Am. Dec. 551; per Denio, J.; *Chamberlain v. Williamson*, 2 Mylne & S. 408; *Meech v. Stoner*, 19 N. Y. 26, 29, per Comstock, J.; *Wade v. Kalbfleisch*, 58 N. Y. 232; 17 Am. Rep. 250; *Smith v. Sherman*, 4 Cush. 408; *Rice v. Stone*, 1 Allen, 566; *Lattimore v. Sinmons*, 13 Serg. & R. 183, 186; [*Miller v. Newell*, 20 S. C. 123; 47 Am. Rep. 823.]

² The whole subject is examined at length, with full analyses of the cases arising under the reformed procedure, in *Pomeroy on Remedies*, secs. 144-153, and cases cited; *Devlin v. The Mayor*, 63 N. Y. 8; *Wheelock v. Lee*, 64 N. Y. 242; *Hoyt v. Thompson*, 5 N. Y. 320, 347; *Haight v. Hayt*, 19 N. Y. 464, 467; *Byxbie v. Wood*, 24 N. Y. 607, 611; *Graves v. Spier*, 58 Barb. 349, 386; *Butler v. New York etc. R. R.*, 22 N. Y. 110, 112; *Bank of California v. Collins*, 5 Hun, 209; *Weire v. Davenport*, 11 Iowa, 49, 52; 77 Am. Dec. 132; *Tyson v. McGuineas*, 25 Wis. 656. In *Devlin v. The Mayor*, *supra*, a contract with the city of New York for cleaning the streets during a certain period for a certain price was held to be assignable by the contractor; and that the assignee could maintain an action for a breach by the city after the assignment, viz., its refusal to allow the assignee to fulfill the contract. Per Allen, J. (pp. 15, 16): "If the service to be rendered is not necessarily *personal*, and such as can only, and with due regard to the interest of the parties and the rights of the adverse party, be rendered by the original contractor, and the latter has not disqualified himself from performance," the contract is assignable. The following special rules illustrate the general conclusions of the text: A

cause of action for fraudulent representations concerning the value of certain property survives: *Garland v. Harrington*, 51 N. H. 409; *Conway v. Cutting*, 51 N. H. 407; *Edwards v. Parkhurst*, 21 Vt. 472; *Rice v. Stone*, 1 Allen, 566; *Zabriskie v. Smith*, 13 N. Y. 322, 333; 64 Am. Dec. 551; *Byxbie v. Wood*, 24 N. Y. 607, 611; *Bond v. Smith*, 4 Hun, 48; *Grant v. Ludlow's Adm'r*, 8 Ohio St. 1, 37; *Beckham v. Drake*, 8 Mees. & W. 846; 9 Mees. & W. 79; 11 Mees. & W. 315. The right to recover compensation under a contract which is still executory, and which depends upon the fulfillment of its stipulations by the assignor or by the assignee, may be assigned: *Brackett v. Blake*, 7 Met. 335; 41 Am. Dec. 442; *Hawley v. Bristol*, 39 Conn. 26; *Field v. The Mayor*, 6 N. Y. 179; 57 Am. Dec. 435; *Devlin v. The Mayor*, 63 N. Y. 8; *Parsons v. Woodward*, 22 N. J. L. 196; *Philadelphia v. Lockhardt*, 73 Pa. St. 211; *St. Louis v. Clemens*, 42 Mo. 69; *Cochran v. Collins*, 29 Cal. 129. This is no less true, although by the terms of the contract, under which the compensation is still to be earned at the time of the assignment, the assignor is not bound to remain in the service, and may be dismissed before the service is rendered and the compensation is earned; of course, in such cases, the assignee must show that he has actually rendered the service and earned the compensation: *Taylor v. Lynch*, 5 Gray, 49; *Hartley v. Tapley*, 2 Gray, 565; *Wallace v. Heywood etc. Co.*, 16 Gray, 209; *Emery v. Lawrence*, 8 Cush. 151; *Tripp v. Brownell*, 12 Cush. 376; *Boyle v. Leonard*, 2 Allen, 407; *Garland v. Harrington*, 51 N. H. 409; *Augur v. N. Y. Belting etc. Co.*, 39 Conn. 536; *Field v. The Mayor*, 6 N. Y. 179;

§ 1276. Assignments Forbidden by Public Policy.—

While large classes of things in action are thus assignable even at law, there are certain species, belonging to a class otherwise assignable, the assignment of which, either at law or in equity, is prohibited from motives of public policy. Thus in England, those emoluments which are paid by the government to certain officials, which are the rewards for past and future public services, and which are at the same time regarded as honorary, or badges of dignity, cannot be assigned.¹ Also, an assignment which

57 Am. Dec. 435. An assignment of the right to compensation under a contract with a municipal corporation, if the work is actually performed, is not invalidated by the fact that the contract was informal, and might have been repudiated by the city: *Wetmore v. San Francisco*, 44 Cal. 294; *Philadelphia v. Lockhardt*, 73 Pa. St. 211; *Brackett v. Blake*, 7 Met. 335; 41 Am. Dec. 442. In all the cases cited in support of the three preceding propositions, it will be observed that at the time of the assignment there was an *existing contract*, and although the agreement might be conditional, and perhaps capable of being rescinded, or the assignor might not be bound by its terms to go on and perform it, yet, as a matter of fact, the contract was performed and the compensation earned after the assignment, either by the assignor who had merely transferred his right to the compensation, or by the assignee himself who had done the services undertaken to be done by the assignor. The capacity of assigning compensation to be earned is not carried so far as to permit a party to assign (at law) a contract which has not yet been entered into, or the right to compensation for services which he has not yet in any manner stipulated to perform. For example, a person cannot assign compensation which he expects to earn from an employer with whom he has not yet made any agreement, and into whose service he has not yet entered: *Mulhall v. Quinn*, 1 Gray, 105, 107; 61 Am. Dec. 414, per Shaw, C. J.; *Farnsworth v. Jackson*, 32 Me. 419; *Jermyn v. Moffitt*, 75 Pa. St. 399; *Skipper v. Stokes*, 42 Ala. 255; 94 Am. Dec. 646. How far such an

assignment would be effectual in equity is considered in a subsequent section: [See §§ 1283, 1289, note.] While the right to compensation may thus be assigned even before it is earned, the right of the other party to the personal services of the one agreeing to render them, it is said, cannot be transferred; for a person cannot be compelled to perform *personal* services on behalf of a different employer from the one to whom he has promised: *Bethlehem v. Annis*, 40 N. H. 34; 77 Am. Dec. 700; *Davenport v. Gentry's Adm'r*, 9 B. Mon. 427, 429. Also, where a person has entered into a contract involving a personal trust or confidence in himself, and stipulating to use his own personal skill, knowledge, etc., he cannot, while the agreement is still executory, by assignment substitute another in his place, in order to perform the service, without the consent of the other contracting party. After the contract has been executed by himself he can assign the right to recover compensation: *Flanders v. Lamphear*, 9 N. H. 201; *Bethlehem v. Annis*, 40 N. H. 34, 40; 77 Am. Dec. 700; *Burger v. Rice*, 3 Ind. 125; *Lansden v. McCarthy*, 45 Mo. 106; *Stevens v. Benning*, 6 De Gex, M. & G. 223. For limitations on this doctrine, see *Devlin v. The Mayor*, *supra*.

¹ Among the instances are the commissions, pay, and half-pay of military and naval officers: *Collyer v. Fallon*, Turn. & R. 459; *Calisher v. Forbes*, L. R. 7 Ch. 109; *Addison v. Cox*, L. R. 8 Ch. 76; *Davis v. Duke of Marlborough*, 1 Swanst. 79; *Priddy v. Rose*, 3 Mer. 86, 102; *McCarthy v. Goold*, 1 Ball & B. 387; *Stone v. Lidderdale*, 2

violates the policy of the law against champerty or maintenance, as operating merely to procure or promote litigation, will not be permitted by a court of equity, even though it may not amount strictly to the criminal offense of champerty or maintenance.¹ For this reason, the assignment of a mere right of action to procure a transaction to be set aside on the ground of fraud is not permitted.²

§ 1277. **The Equitable Jurisdiction — Reformed Procedure.** — The following conclusions as to the equitable jurisdiction may be drawn from the foregoing analysis. In England, and in all of the American states which have adopted the reformed procedure, the direct, absolute, or what may be called legal, assignment of legal things in action which are assignable confers on the assignee a purely legal interest, and he can only sue in his own name by a civil action which is to all intents *legal* in its

Anstr. 533; the salaries of judges and of certain other officials: *Arbuthnot v. Norton*, 5 Moore P. C. C. 219; *Greenfell v. Dean of Windsor*, 2 Beav. 544, 549; *Tunstall v. Boothby*, 10 Sim. 542; *Cooper v. Rielly*, 2 Sim. 560. There are motives of public policy affecting the English law very different from any which belong to our republican institutions. I doubt much whether the law of this country, from considerations of public policy, prohibits the assignment of any official salary, public emolument, pension, and the like, unless such prohibition arises from statute. The notion that salaries, official emoluments, or even pensions, are merely *honorary* in the sense of the English law, is entirely foreign to our institutions. Statutes have made certain official and public emoluments personal to their recipients, and have forbidden their assignment, but I think the American law goes no further: See *Wanless v. United States*, 6 Ct. of Cl. 123; *Bates v. United States*, 4 Ct. of Cl. 569; *Burke v. United States*, 13 Ct. of Cl. 231; *Spofford v. Kirk*, 97 U. S. 484; *Billings v. O'Brien*, 45 How. Pr. 392; 14 Abb. Pr., N. S., 238; *Heirs of Emerson v. Hall*, 13 Pct. 409. [The Eng-

lish rule was followed as to assignment of future emoluments in *Bliss v. Lawrence*, 58 N. Y. 442, 17 Am. Rep. 273, *Schloss v. Hewlett*, 81 Ala. 266, *Shannon v. Bruner*, 36 Fed. Rep. 147, on the ground of "the necessity of securing the efficiency of the public service, by seeing to it that the funds for its maintenance should be received by those who are to perform the work, at such periods as the law had appointed for their payment."]

¹ *Reynell v. Sprye*, 1 De Gex, M. & G. 660; *Strange v. Brennan*, 15 Sim. 346; *Knight v. Bowyer*, 2 De Gex & J. 421; *Hilton v. Woods*, L. R. 4 Eq. 432; *Dorwin v. Smith*, 35 Vt. 69; *Thurston v. Percival*, 1 Pick. 415; *Arden v. Patterson*, 5 Johns. Ch. 44; *Thalimer v. Brinkerhoff*, 20 Johns. 386; *Slade v. Rhodes*, 2 Dev. & B. Eq. 24; *Coquillard's Adm'r v. Bearss*, 21 Ind. 479; 83 Am. Dec. 362; *Martin v. Veeder*, 20 Wis. 466.

² *Powell v. Knowler*, 5 Atk. 224, 226; *Prosser v. Edmonds*, 1 Younge & C. 481; *De Hoghton v. Money*, L. R. 2 Ch. 164, 169; *Hill v. Boyle*, L. R. 4 Eq. 260; *Milwaukee etc. R. R. v. Milwaukee etc. R. R.*, 20 Wis. 174, 183; 88 Am. Dec. 740. [See also *Gruber v. Baker*, 20 Nev. 453.]

character; so that under these circumstances there is no occasion for the equitable jurisdiction. Where the thing in action assigned is an equitable demand, and where the assignment of even a legal demand is equitable, or such as the courts of law under the former system did not recognize, in might be supposed that the interest of the assignee would be equitable, and that the suit upon it would be within the equitable jurisdiction. But even in these cases the assignee must sue in his own name; and if the remedy is merely a pecuniary judgment, and no accounting is necessary, the action would, in all its elements and features, be legal rather than equitable. If, however, an accounting were necessary, or if the demand were of such a nature that the recovery would depend upon the application of equitable doctrines, the civil action of the assignee would undoubtedly be equitable, and the equitable jurisdiction of the court would be invoked.¹

§ 1278. The Equitable Jurisdiction — Common-law Procedure.—In those states which retain the two jurisdictions and systems of procedure, whether each is administered by a separate tribunal or both are conferred upon

¹ This conclusion follows from the abolition of the distinctive actions at law and suits in equity. If, for example, a person having a particular fund or amount due him in the hands of A should give his creditor, B, an order on A for the whole or for any definite part of the fund, this order would operate as an equitable, and not a legal, assignment. The assignee, B, must bring an action against A in his own name. As this action would be brought for the recovery of a certain sum of money, as it would involve no accounting, and as the recovery would depend upon no equitable doctrines *except the equitable character of the assignment*, I have no doubt that the action would be, in effect, legal, and governed by the rules applicable to legal actions; as, for example, it would be triable by a jury. In fact, most of the codes of procedure, in prescribing what classes of actions are necessarily triable by a jury, include all those merely for the recovery of money,

without any distinction between those based upon an equitable and those upon a legal demand or cause of action. It is obvious, however, that there may be many cases of assignment where the demand being wholly equitable, the action by the assignee would fall within the equitable jurisdiction, and depend upon equitable principles. It is undoubtedly growing more and more difficult to draw a clear line between the legal and the equitable jurisdictions in the states where the new procedure prevails; the constant tendency is towards a commingling of the two. This result would be not only harmless, but even beneficial, if in all such cases the doctrines of equity were uniformly allowed to control and to govern the decisions; but, unfortunately for the proper administration of justice, it is in this very class of cases that a tendency appears to follow legal doctrines alone, and to ignore or overlook the rules of equity.

the same court, the jurisdiction at law is complete with respect to the class of assignments first above described, — the legal transfer of a legal thing in action. If the assignee is still compelled to sue in the name of his assignor, or if, as in some states, he is permitted to sue in his own name, in either case the legal remedy is adequate, and there is no ground left for the jurisdiction of equity. It is now the settled rule that a court of equity will not take jurisdiction of a suit by an assignee of a legal thing in action, whenever he may obtain ample remedy by an action at law in the name of his assignor.¹ With respect, however, to assignments of the kinds secondly described above, the transfer of purely equitable demands, or the purely equitable assignment of legal demands, the jurisdiction over the things in action so assigned at the suit of the assignee continues to be exclusively equitable. As the law does not admit in the one case the existence of

¹ This rule was fully settled in England while the former systems of courts and jurisdictions still existed: *Hammond v. Messenger*, 9 Sim. 327, 332; *Rose v. Clarke*, 1 Younge & C. Ch. 534; *Keys v. Williams*, 3 Younge & C. 462, 466, 467. In *Hammond v. Messenger*, Shadwell, V. C., said: "If this case were stripped of all special circumstances, it would be simply a bill filed by a plaintiff who had obtained from certain persons to whom a debt was due a right to sue in their names for the debt. It is quite new to me that, in such a simple case as that, this court allows, in the first instance, a bill to be filed against the debtor by the person who has become assignee of the debt. I admit that if special circumstances are stated, and it is represented that notwithstanding the right which the party has obtained to sue in the name of the creditor the creditor will interfere and prevent the exercise of that right, this court will interfere for the purpose of preventing that species of wrong being done; and if the creditor will not allow the matter to be tried at law in his name, this court has a jurisdiction, in the first instance, to compel the debtor to pay the debt to the plaintiff, especially

in a case where the act done by the creditor is done in collusion with the debtor." The same rule had been established in this country prior to the change in the procedure: *Ontario Bank v. Mumford*, 2 Barb. Ch. 596, 615; see quotation from the opinion of Walworth, C., *ante*, § 281, note. The recent case of *Walker v. Brooks*, 125 Mass. 241, also expressly holds that equity will not assume jurisdiction merely because the assignee cannot sue at law in his own name, but will do so where the assignor refuses to allow his name to be used: See also *Hagar v. Buck*, 44 Vt. 285, 290; 8 Am. Rep. 368; *Chicago etc. R'y v. Nichols*, 57 Ill. 464; *Carter v. United Ins. Co.*, 1 Johns. Ch. 463; *Field v. Maghee*, 5 Paige, 539; *Rogers v. Traders' Ins. Co.*, 6 Paige, 583; *Adair v. Winchester*, 7 Gill & J. 114; *Moseley v. Boush*, 4 Rand. 392; *Lenox v. Roberts*, 2 Wheat. 373. [See also *Hayward v. Andrews*, 106 U. S. 672; *New York Guaranty Co. v. Memphis Water Co.*, 107 U. S. 205; *Smith v. Bourbon Co.*, 127 U. S. 105.] As illustrations of assignments purely equitable, the transfer of notes or bills payable to order, but not indorsed, see last note under § 1274.

a legal right or demand, and in the other the existence of a valid transfer, courts of law can have no jurisdiction to entertain actions in which a recovery must be based upon the legal validity of the demand or of the assignment. The ancient jurisdiction of equity over the assignment of things in action has been reduced to these somewhat narrow limits.

§ 1279. **Incidents of an Assignment.** — It is a familiar doctrine that the assignee of a thing in action, unless it be negotiable, takes it subject to existing equities. It is also the settled rule in England that the assignee must give notice to the debtor party or legal holder of the fund, in order to establish and secure his right of priority over other assignees of the same demand; but this rule has not been generally adopted by the American courts. These matters have already been discussed in a previous chapter upon priorities.¹

¹ As to notice given to the debtor, see vol. 2, §§ 694-702; as to assignments being subject to equities in favor of the debtor, see vol. 2, §§ 703-706; equities in favor of third persons: *Ibid.*, §§ 707-715. When the assignor holds collateral securities of the debt transferred, the assignment will sometimes carry such securities, and entitle the assignee to their benefit: See *Pattison v. Hull*, 9 Cow. 747; *Foster v. Fox*, 4 Watts & S. 92; *Cathcart's Appeal*, 13 Pa. St. 416; *Hurt v. Wil-*

son, 38 Cal. 263; a guaranty of the demand assigned: *Craig v. Parkis*, 40 N. Y. 181; 100 Am. Dec. 469; but upon the question whether and when a guaranty will pass by an assignment of the principal debt, the decisions seem to be conflicting. The rule generally prevails in this country, as has been shown, that a *grantor's* lien will not pass by an assignment of the claim for unpaid purchase-money: See *ante*, § 1254.

SECTION II.

EQUITABLE ASSIGNMENT OF A FUND BY ORDER OR OTHERWISE.

ANALYSIS.

- § 1280. The general doctrine; its requisites, scope, operation, and effects.
- § 1281. Notice to the creditor-assignee essential.
- § 1282. A *mere* mandate to a depositary or agent is not an equitable assignment, but is revocable; an appropriation is necessary.
- § 1283. Funds not yet in existence.
- § 1284. Operation of bills of exchange and checks.

§ 1280. **The General Doctrine — Its Requisites, Scope, Operation, and Effects.** — It is an ancient doctrine of the common law that no action of contract can be maintained unless there is privity of contract between the plaintiff and the defendant.¹ It follows that if B is indebted to A, or has in his hands a fund belonging to A, and A assigns such debt or fund to C, or gives him an order for it upon B, C can maintain no action at law against B to recover the amount, unless B has assented to the appropriation and promised to pay the money; and the action in such case will not be based upon any property or interest in the fund acquired by C through the assignment or order, but upon B's express or implied promise. The doctrine of equity is very different. Equity recognizes an interest in the fund, in the nature of an equitable property, obtained through the assignment, or the order which operates as an assignment, and permits such interest to be enforced by an action, even though the debtor or depositary has not assented to the transfer.² It is an established doctrine that an equitable

¹ This extremely technical rule has undoubtedly yielded somewhat to the influence of equitable notions, so that in most of the states an action at law may be maintained by A upon a promise made for his benefit to B, from whom alone the consideration moves;

but this is opposed to the original theories of the common law.

² Some cases and books speak of the interest as merely an equitable lien or charge. That it is more than a lien, and is an equitable *property*, is plain from the remedy allowed.

assignment of a specific fund in the hands of a third person creates an equitable property in such fund. If, therefore, A has a specific fund in the hands of B, or in other words, B, as a depositary or otherwise, holds a specific sum of money which he is bound to pay to A, and if A agrees with C that the money shall be paid to C, or assigns it to C, or gives to C an order upon B for the money, the agreement, assignment, or order creates an equitable interest or property in the fund in favor of the assignee, C, and it is not necessary that B should consent or promise to hold it for or pay it to such assignee.¹ In

An equitable lien is never enforced by a suit to obtain possession, much less dominion over the thing; the remedy is, at most, a sale of the thing, so that its proceeds may be applied upon the obligation secured. In this case, however, the assignee recovers possession and dominion of the fund as his own. The only equitable feature of the transaction is, in fact, the *mode of transfer*.

¹ The doctrine, in its full scope and with its principal limitation, is so clearly and accurately stated by Rapallo, J., in the recent case of Brill v. Tuttle, 81 N. Y. 454, 457, 37 Am. Rep. 515, that I shall quote the passage: "There can be no doubt as to the rule that when, for a valuable consideration from the payee, an order is drawn upon a third party and made payable out of a particular fund, then due or to become due from him to the drawer, the delivery of the order to the payee operates as an assignment pro tanto of the fund, and the drawee is bound, after notice of such assignment, to apply the fund as it accrues to the payment of the order, and to no other purpose, and the payee may, by action, compel such application. It is equally well established that if a draft be drawn generally upon the drawee, to be paid by him in the first instance on the credit of the drawer, and without regard to the source from which the money used for its payment is obtained, the designation by the drawer of a particular fund out of which the drawee is to subsequently reimburse himself for such payment, or a particular account to which it is to be

charged, will not convert the draft into an assignment of the fund, and the payee of the draft can have no action thereon against the drawee unless he duly accepts. In all cases, therefore, in which a particular fund to accrue *in futuro* is designated in the draft, and the language is ambiguous, the turning-point is, whether it was the intention of the parties that the payment should be made only out of the designated fund, when or as it should accrue, or whether the direction to the drawee to pay was intended to be absolute, and the fund was mentioned only as a source of reimbursement, or an instruction as to book-keeping": Row v. Dawson, 1 Ves. Sr. 331; 2 Lead. Cas. Eq., 4th Am. ed., 1531, 1562-1565, 1641-1660; Rodick v. Gandell, 1 De Gex, M. & G. 763; Ex parte Imbert, 1 De Gex & J. 152; Jones v. Farrell, 1 De Gex & J. 208; Gurnell v. Gardner, 9 Jur., N. S., 1220; 4 Giff. 626; Burn v. Carvalho, 4 Mylne & C. 690, 702; Watson v. Duke of Wellington, 1 Russ. & M. 602, 605; Ex parte South, 3 Swanst. 392; Lett v. Morris, 4 Sim. 607; Yeates v. Groves, 1 Ves. 280; Adams v. Claxton, 6 Ves. 226, 230; Lepard v. Vernon, 2 Ves. & B. 51; Ex parte Alderson, 1 Madd. 53; Collyer v. Fallon, Turn. & R. 459, 475; Priddy v. Rose, 3 Mer. 86, 102; Diplock v. Hammond, 5 De Gex, M. & G. 320; Myers v. United etc. Co., 7 De Gex, M. & G. 112; McGowan v. Smith, 26 L. J., N. S., (Ch.) 8; Ex parte North Western Bank, L. R. 15 Eq. 69; Ex parte Cooper, L. R. 20 Eq. 762; Ex parte Montagu, L. R. 1 Ch. Div. 554; Ex parte Garrard, L. R. 5

order that the doctrine may apply, and that there may be an equitable assignment creating an equitable property, there must be a specific fund, sum of money, or debt, actually existing or to become so *in futuro*, upon which the assignment may operate, and the agreement, direction for payment, or order, must be, in effect, an assignment of that fund or of some definite portion of it. The sure criterion is, whether the order or direction to the drawee, if assented to by him, would create an absolute personal indebtedness payable by him at all events, or whether it creates an obligation only to make payment out of the particular designated fund.¹ The agreement, direction,

Ch. Div. 61; McLellan v. Walker, 26 Me. 114; Legro v. Staples, 16 Me. 252; Robbins v. Bacon, 3 Me. 346; Conway v. Cutting, 51 N. H. 407; Blin v. Pierce, 20 Vt. 25; Cutts v. Perkins, 12 Mass. 206; Kingman v. Perkins, 105 Mass. 111; Taylor v. Lynch, 5 Gray, 49; Ehrichs v. De Mill, 75 N. Y. 370; Risley v. Smith, 64 N. Y. 576; Munger v. Shannon, 61 N. Y. 251; Alger v. Scott, 54 N. Y. 14; Parker v. Syracuse, 31 N. Y. 376; Lowery v. Steward, 25 N. Y. 239; 82 Am. Dec. 346; Lewis v. Berry, 64 Barb. 593; Hall v. Buffalo, 2 Abb. App. 301; Clark v. Mauran, 3 Paige, 373; Richardson v. Rust, 9 Paige, 243; Morton v. Naylor, 1 Hill, 583; Luff v. Pope, 5 Hill, 413; Phillips v. Stagg, 2 Edw. Ch. 108; Superintendent etc. v. Heath, 15 N. J. Eq. 22; Caldwell v. Hartuppee, 70 Pa. St. 74; Lightner's Appeal, 82 Pa. St. 301; Chase v. Petroleum Bank, 66 Pa. St. 169; Patten v. Wilson, 34 Pa. St. 299; Nesmith v. Drum, 8 Watts & S. 9; 42 Am. Dec. 260; Gibson v. Finley, 4 Md. Ch. 75; U. S. Bank v. Huth, 4 B. Mon. 423; Newby v. Hill, 2 Met. (Ky.) 530; McWilliams v. Webb, 32 Iowa, 577; Walker v. Mauro, 18 Mo. 564; Wheatley v. Strobe, 12 Cal. 92, 98; 73 Am. Dec. 522; Spain v. Hamilton, 1 Wall. 604; Tiernan v. Jackson, 5 Pet. 580, 598; Mandeville v. Welch, 5 Wheat. 277, 286; and see also Papineau v. Naumkeag etc. Co., 126 Mass. 372; Adams v. Willimantic etc. Co., 46 Conn. 320; Bower v. Hadden etc. Co., 30 N. J. Eq. 171; Whitehead v. Fitzpatrick, 53 Ga. 345; Kahn-

weiler v. Anderson, 78 N. C. 133; Hydraulic etc. Co. v. Saville, 1 Mo. App. 96; Farmers' etc. Bank v. Kansas etc. Co., 3 Dill. 287; Belden v. Meeker, 47 N. Y. 307; Danklessen v. Braynard, 3 Daly, 183; Clafin v. Kimball, 52 Vt. 6. [See also Webb v. Smith, 30 Ch. Div. 192; Lauer v. Dann, 115 N. Y. 408; Kirtland v. Moore, 40 N. J. Eq. 106; Brokaw v. Brokaw, 41 N. J. Eq. 215; Shenandoah Valley R. Co. v. Miller, 80 Va. 821; County of Des Moines v. Hinkley, 62 Iowa, 637; Shannon v. Hoboken, 37 N. J. Eq. 123; Lee v. Robinson, 15 R. I. 359. As to the necessity of a consideration to support the assignment, see Tallman v. Hoey, 89 N. Y. 537.]

¹Ex parte Carruthers, 3 De Gex & S. 570; Malcolm v. Scott, 3 Hare, 39; Kelley v. Mayor etc., 4 Hill, 263; Brill v. Tuttle, 81 N. Y. 454, 457; 37 Am. Rep. 515. In Shaver v. Western U. Tel. Co., 57 N. Y. 459, 464, a clerk in the employ of the company, with the knowledge and assent of the president of the company, gave the plaintiff, for value, the following written order: "Treasurer Western Union Telegraph Company, please pay to D. L. N. fifty dollars, monthly, commencing at, etc., until three hundred dollars is paid, and charge the same to my salary account." He was all the time working at a monthly salary exceeding fifty dollars. The order was presented to the treasurer and filed by him, but was countermanded by the drawer before any payment had been made upon it. The holder sued the company, claiming that the order was an equi-

or order being treated in equity as an assignment, it is not necessary that the entire fund or debt should be assigned; the same doctrine applies to an equitable assignment of any definite part of a particular fund.¹ The

table assignment. The commission of appeals held that it did not operate as such an assignment, because it did not direct the payment "to be made out of any designated fund or particular source." The correctness of this decision, *upon the ground thus taken*, may well be doubted. It seems to carry the rule stated in the text beyond its true meaning as established by numerous cases. The fund drawn on seems to be specifically designated without resorting to extrinsic circumstances. The authority of this decision *on this point*, though not expressly overruled, was, I think, completely shaken by the later case of Brill v. Tuttle, *supra*. The decision was cited by counsel and relied upon as absolutely controlling; Rapallo, J., commenting upon it, said (p. 460): "The order was drawn in pursuance of a previous special arrangement known to the payee, *whereby the drawer was authorized to revoke it*, and this was a controlling circumstance. Lott, Com., in delivering the opinion, says: 'Notice was thereby given to the party who advanced money on the faith of the order, that it was not to be considered an absolute assignment, but that it was taken subject to the right of the drawer to revoke it. . . . Any and every person taking it took it subject to the exercise of that right.' The order was revoked by the drawer, *and whatever else may have been said is unimportant*, as this was the point upon which the case turned." This criticism, I think, destroys the authority of Shaver v. Western U. Tel. Co., upon the point under discussion. It seems also to conflict with Lowery v. Steward, Parker v. Syracuse, Alger v. Scott, and Ehrichs v. De Mill, cited in the previous note. See also Hutter v. Ellwanger, 4 Lans. 8; Lunt v. Bank of North America, 49 Barb. 221; [Percival v. Dunn, 29 Ch. Div. 128; Goringe v. Irwell etc. Works, 34 Ch. Div. 128.]

¹ Watson v. Duke of Wellington, 1 Russ. & M. 602, 605; Lett v. Morris, 4 Sim. 607; Smith v. Everett, 4 Brown

Ch. 64; Morton v. Naylor, 1 Hill, 583; Grain v. Aldrich, 38 Cal. 514; 99 Am. Dec. 423; Superintendent etc. v. Heath, 15 N. J. Eq. 22; Risley v. Phenix Bank, 11 Han, 484; Etheridge v. Vernoy, 74 N. C. 800; Lapping v. Duffy, 47 Ind. 51; Gardner v. Smith, 5 Heisk. 256; Raines v. United States, 11 Ct. of Cl. 648 (void from uncertainty). Some American courts seem to have been troubled with the common-law rule which forbids the assignment of a part of a debt, but the reasons for this rule at law have no application whatever in equity. The main reason for the legal rule is, that the debtor should not be harassed with several different suits to recover parts of one single obligation. In equity no such consequence could result. If parts of a demand are assigned to different persons, the rights of all the assignees must be settled in one suit; in a suit by any one assignee, not only the debtor and the assignor, but all the other assignees, must be made parties, so that the one decree may determine the duty of the debtor towards each claimant. There is no greater nor more unnecessary source of error than the importing *legal* notions as to parties and actions into the discussion of equitable doctrines: See Mandeville v. Welch, 5 Wheat. 277, 286; Palmer v. Merrill, 6 Cush. 282, 287; 52 Am. Dec. 782, per Shaw, C. J.; Bullard v. Randall, 1 Gray, 605; 61 Am. Dec. 433; Buck v. Swazey, 35 Me. 41; 56 Am. Dec. 631; Hopkins v. Beebe, 26 Pa. St. 85, 88; Moore v. Gravelot, 3 Ill. App. 442; Burnett v. Crandall, 63 Mo. 410; Lindsay v. Price, 33 Tex. 280. The leading case of Mandeville v. Welch was an action at law, and this is true of several other cases in which a similar ruling has been made. It will also be noticed that some of these decisions were by courts not possessing a full equity jurisdiction. There is, in fact, no doubt that, *on principle*, an assignment of a definite part of a fund or demand is valid in equity, whether the assignment be direct or in the form of an order: See opinion in

doctrine that the equitable assignee obtains, not simply a right of action against the depositary, mandatary, or debtor, but an equitable property in the fund itself, is carried out into all of its legitimate consequences. Thus the assignee may not only recover the money from the original depositary, the drawee, but may pursue it or its proceeds under any change of form, *as long as it can be certainly identified*, into the hands of third persons who have acquired possession of it from the depositary as volunteers, or with notice of the assignee's prior right. The fund in this respect resembles a fund impressed with a trust.

§ 1281. **Notice to the Creditor-Assignee Essential.**—Although, whenever a debtor, in the manner above described, makes to his creditor an equitable assignment of a specific fund or debt in the hands of or owing by a third person, the assent of such *third person* is not requisite to the effect of the transfer in equity, yet the assignment, appropriation, direction, or order is not absolute, but may be revoked by the debtor-assignor at any time before the *creditor-assignee* has been notified of it, and has expressly or impliedly assented thereto. In such a case notice to and assent by the *creditor-assignee* are essential to an absolute assignment.¹

§ 1282. **A Mere Mandate to an Agent or Depositary is not an Assignment, but is Revocable.**—In all cases, even when the assignee was not a creditor of the assignor, the order must be delivered to the intended payee, or he must be notified of it by the drawer's procurement, in order that it may operate as an equitable assignment. A mere letter, communication, or other mandate to the

Grain v. Aldrich, *supra*. [See also cases reviewed in James v. Newton, 142 Mass. 366; Exchange Bank v. McLoon, 73 Me. 498; 40 Am. Rep. 388; Harris County v. Campbell, 68 Tex. 22; 2 Am. St. Rep. 467; Phillips v. Edsall, 127 Ill. 535.]

¹ 2 Scott v. Porcher, 3 Mer. 652;

3 Eq. JUR. — 124

Wallwyn v. Coutts, 3 Mer. 707, 708; 3 Sim. 14; Acton v. Woodgate, 2 Mylne & K. 492; Garrard v. Lord Landerdale, 2 Russ. & M. 451; Morrell v. Wootten, 16 Beav. 197; Glegg v. Rees, L. R. 7 Ch. 71; and see cases in next note. [See also Brockmeyer v. National Bank, 40 Kan. 744.]

agent, depositary, or debtor, directing him to pay the fund to a designated person, will not of itself operate as an assignment, but it may be withdrawn or revoked at any time before the arrangement is completed, by information given to the intended payee by or on behalf of the drawer.¹ What shall amount to the present appropriation

¹ Burn v. Carvalho, 7 Sim. 109; 4 Mylne & C. 690; Carvalho v. Burn, 4 Barn. & Adol. 382; 1 Ad. & E. 883. This case will illustrate the difference between the rules of law and of equity on this subject. One Fortunato had goods in the hands of Rego in a foreign port; he wrote to Burn that he would direct Rego to deliver the goods to an agent of Burn to pay a certain liability of his to Burn; soon after, he sent an order or letter to Rego, directing him to deliver the goods as above stated to Burn's agent. F. committed an act of bankruptcy before his letter reached R., and the goods were not delivered by R. to B.'s agent until after F. had been adjudicated a bankrupt. The assignee in bankruptcy then brought an action of trover against B. for the value of the goods, and obtained judgment on the ground that B. had acquired no title to nor lien on the goods previous to the bankruptcy, and his taking possession of them was an unlawful conversion. Burn thereupon filed a bill in chancery; and the court of chancery held that he had obtained an equitable ownership by the equitable assignment resulting from F.'s order of direction to R. and the letter to B. notifying him of the disposition thus made, and the judgment at law was therefore enjoined. The chancellor said: "In equity, an order given by a debtor to his creditor upon a third person having funds of the debtor, to pay the creditor *out* of such funds, is a binding equitable assignment of *so much of the funds*. In Row v. Dawson, Lord Hardwicke says: 'It is a credit on the fund, and must amount to an assignment of *so much of the debt*; and though the law does not admit of an assignment of a chose in action, this court does, and any words will do, no particular words being necessary thereto'; and in Yeates v. Groves, Lord Thurlow says: 'This is nothing but a direction by a man to

pay *part of his money* to another for a valuable consideration. If he could transfer, he had done it; and it being his own money, he could transfer.' In Ex parte South, Lord Eldon says: 'It has been decided in bankruptcy that if a creditor give an order on his debtor to pay a sum of money in discharge of his debt [i. e., the debt owing by the drawer to the payee], and that order is shown to the debtor [the drawee], it binds him. On the other hand, this doctrine has been brought into doubt by some decisions in the courts of law which require that the party receiving the order [the drawee] should in some way enter into a contract. That has been the course of their decisions, but is certainly not the doctrine of this court.' In Fitzgerald v. Stewart, 2 Russ. & M. 457, and Lett v. Morris, the same rule was acted upon, and in Watson v. Duke of Wellington, Sir J. Leach thus defines an equitable assignment: 'In order to constitute an equitable assignment, there must be an engagement to pay out of a particular fund.' Upon this principle it is that assignments of future freight and of non-existing but expected funds have been enforced in equity; but this case is far within the limits of the principle; for here there is an existing fund in an agent's hands, and there is a distinct contract to discharge the liability out of that fund, and to give directions for that purpose. I think, therefore, that the letters of the 4th and 9th of April amounted to an equitable assignment of the fund in the hands of Rego." See also, as further examples of incomplete directions not amounting to assignments, Malcolm v. Scott, 3 Macn. & G. 29; Ex parte Shellard, L. R. 17 Eq. 109; Tooth v. Hallett, L. R. 4 Ch. 242; Ex parte Hall, L. R. 10 Ch. Div. 615; White v. Coleman, 127 Mass. 34; McEwen v. Brewster, 17 Hun, 223.

which constitutes an equitable assignment is a question of intention, to be gathered from all the language, construed in the light of the surrounding circumstances. For example, while it is not essential to the existence of an equitable assignment of a fund that the debtor, agent, or depository should be *expressly* directed to pay over the money to the assignee, the absence of such a direction may tend to show an intention not to transfer a present interest in the fund, but that the arrangement is wholly executory and prospective.¹

§ 1283. **Doctrine Extends to a Fund not yet in Existence.** — The equitable doctrine with respect to the assignment of property to be acquired in 'future is extended to this species of equitable transfer. The fund need not be actually in being; if it exists potentially, — that is, if it will in due course of things arise from a contract or arrangement already made or entered into when the order is given, — the order will operate as an equitable assignment of such fund as soon as it is acquired, and will create an interest in it which a court of equity will enforce.²

¹ See *Rodick v. Gandell*, 1 De Gex, M. & G. 763, 778. G. & B., a firm of contractors, were indebted to a bank, and promised it that an amount due them from a railway company should be appropriated in payment of this debt. They then requested the solicitors of the railway company to carry out this arrangement. Although the solicitors notified the bank of this request or instruction, and some partial payments were made to it, the chancellor held that the arrangement did not amount to an equitable assignment.

² For example, an order for the proceeds of goods which are about to be sold by an agent of the drawer under an arrangement already made; an order by an employee upon the employer whom he has agreed to serve, directing payment of future wages to be earned; an order by a contractor for future payments to become due, and the like. The fund in all such cases is particular and definite, although only potential: *Dickinson v. Marrow*,

14 Mees. & W. 713; *Brill v. Tuttle*, 81 N. Y. 454, 457; 37 Am. Rep. 515, and cases cited; *Garland v. Harrington*, 51 N. H. 409; *Tripp v. Brownell*, 12 Cush. 376; *Taylor v. Lynch*, 5 Gray, 49; *Macomber v. Doane*, 2 Allen, 541; *St. Johns v. Charles*, 105 Mass. 262; *Augur v. New York Belting etc. Co.*, 39 Conn. 536; *Hawley v. Bristol*, 39 Conn. 26; *Harrop v. Landers etc. Co.*, 45 Conn. 561; *Ruple v. Bindley*, 91 Pa. St. 296; *Brooks v. Hatch*, 6 Leigh, 534. In the following cases, such transaction was held not operative as an equitable assignment. In most instances the decision was placed upon the special circumstances. The New York cases which seem to hold as a general doctrine that such assignments are never operative are clearly overruled by the recent case of *Brill v. Tuttle*, *supra*; *Ex parte Shellard*, L. R. 17 Eq. 109; *Tooth v. Hallett*, L. R. 4 Ch. 242; *Papineau v. Naumkeag etc. Co.*, 126 Mass. 372; *Lightbody v. Smith*, 125 Mass. 51; *White v. Coleman*, 130 Mass. 316; *Adams v.*

§ 1284. **Bills of Exchange and Checks not, in General, Assignments.**—An ordinary bill of exchange, or draft, drawn generally, and not upon any particular fund, whether accepted or not by the drawee, does not operate as an equitable assignment. Its operation is not changed even when funds have been placed in the drawee's hands as a means of payment; for the drawee may apply these funds to another use, and although this act might violate his duty to the drawer, the payee would obtain no interest in or claim upon the specific fund.¹ According to the

Willimantic etc. Co., 46 Conn. 320; Brill v. Tuttle, 15 Hun, 289 (reversed); Hutter v. Ellwanger, 4 Lans. 9; Schreyer v. Mayor, 8 Jones & S. 255.

Such a claim for a future fund, wages, proceeds, etc., is in the nature of a possibility coupled with an interest, and in some states is assignable even at law: See next section III.

The order on a future fund which thus operates as an equitable assignment should be carefully distinguished from a *mere promise* to appropriate an existing or future fund in discharge of an obligation, or a mere promise to give an order on a fund, and the like. The English courts hold that not only a present appropriation by order of a particular fund operates as an equitable assignment, but also a *promise or executory agreement* to apply a fund in discharge of an obligation has the same effect in equity: Rodick v. Gandell, 1 De Gex, M. & G. 763, per Lord Truro; Riccard v. Prichard, 1 Kay & J. 277; and in Thomson v. Simpson, L. R. 5 Ch. 659, Lord Hatherley and James, L. J., seem to admit that an executory agreement may amount to an appropriation, but require that the evidence of it should be most clear and explicit. The American courts do not generally accept this doctrine. They require a *present appropriation*, by order or otherwise, of a fund, whether existing or future; a mere promise or executory agreement to apply or to appropriate a fund does not, according to the American rule, amount to an equitable assignment: Christmas v. Russell, 14 Wall. 69; Trist v. Child, 21 Wall. 441; Ex parte Tremont Nail Co., 16 Bank. Reg. 448; Christmas's

Adm'r v. Griswold, 8 Ohio St. 558; Rogers v. Hosack, 18 Wend. 319. [See also Williams v. Ingersoll, 89 N. Y. 508, 518.] It seems to me, however, that the opinions in Thomson v. Simpson, *supra*, leave very little difference between the English and the American rules.

¹Watson v. Duke of Wellington, 1 Russ. & M. 602; Shand v. Du Buisson, L. R. 18 Eq. 283; Ex parte Shellard, L. R. 17 Eq. 109; Harris v. Clark, 3 N. Y. 93; 51 Am. Dec. 352; Cowperthwaite v. Sheffield, 3 N. Y. 243; 1 Sand. 416; Marine etc. Ins. Bank v. Janney, 3 Sand. 257; Phillips v. Stagg, 2 Edw. Ch. 108; Luff v. Pope, 5 Hill, 413; 7 Hill, 577; Greenfield's Estate, 24 Pa. St. 232, 240; Hopkins v. Beebe, 26 Pa. St. 85; Sands v. Matthews, 27 Ala. 399; Kimball v. Donald, 29 Mo. 577; 64 Am. Dec. 200; Mandeville v. Welch, 5 Wheat. 277; First Nat. Bank v. Dubuque etc. R'y, 52 Iowa, 378; 35 Am. Rep. 280; Jones v. Pacific etc. Co., 13 Nev. 359; 29 Am. Rep. 308. [See also Whitney v. Eliot Nat. Bank, 137 Mass. 351; 50 Am. Rep. 316, and cases cited; Holbrook v. Payne, 151 Mass. 383; 21 Am. St. Rep. 456; Cashman v. Harrison, 90 Cal. 297.] But a bill of exchange *drawn on a specific fund* may operate as an equitable assignment of it: Kahnweiler v. Anderson, 78 N. C. 133. An agreement between the drawer and payee that certain funds remitted or the proceeds of certain goods consigned to the drawee shall be appropriated in payment of the bill may create an equitable interest in or lien upon the fund or proceeds in favor of the payee so that they shall not be diverted from their appropri-

great preponderance of authority, a check is, in this respect, a bill of exchange, and does not act as an equitable assignment of a portion of the drawer's deposit equal in amount to the face of the check.¹ There are cases, however, which hold that, under the circumstances in which it is ordinarily given, being drawn against an actual deposit, and not expected to be paid unless a sufficient amount stands to the credit of the drawer, a check is to all intents an order upon a particular fund within the meaning of the equitable rule, and assigns a portion of that fund to the payee equal in amount to its face.² A

ated purpose by the drawee: See *ante*, § 1237, and cases cited; *Marine etc. Ins. Bank v. Jauncey*, 1 Barb. 486; *Lowery v. Steward*, 25 N. Y. 239; 82 Am. Dec. 346; *Harwood v. Tucker*, 18 Ill. 544; *Cowperthwaite v. Sheffield*, 3 N. Y. 243; *Frith v. Forbes*, 4 De Gex, F. & J. 409; *Robey etc. Iron-works v. Ollier*, L. R. 7 Ch. 695; *Ranken v. Alfaro*, L. R. 5 Ch. Div. 786. [But see *Brown v. Kough*, 29 Ch. Div. 848; *Phelps v. Comber*, 29 Ch. Div. 813.]

¹ *Hopkinson v. Forster*, L. R. 19 Eq. 74; *In re Merrill*, 71 N. Y. 325, and cases cited; *Tyler v. Gould*, 48 N. Y. 682; *Ætna Nat. Bank v. Fourth Nat. Bank*, 46 N. Y. 82, 87; 7 Am. Rep. 314; *Chapman v. White*, 6 N. Y. 412; 57 Am. Dec. 464; *Harris v. Clark*, 3 N. Y. 93; 51 Am. Dec. 352; 2 Barb. 94; *Winter v. Drury*, 5 N. Y. 525; *Dykers v. Leather Man. Bank*, 11 Paige, 612; *Bank of Republic v. Millard*, 10 Wall. 152; *Marine Bank v. Fulton Bank*, 2 Wall. 252; *Moses v. Franklin Bank*, 34 Md. 574. [See also *Florence M. Co. v. Brown*, 124 U. S. 355; *O'Connor v. Mechanics' Bank*, 124 N. Y. 324; *Harrison v. Wright*, 100 Ind. 515; 50 Am. Rep. 805; *Grammel v. Carmer*, 55 Mich. 201; 54 Am. Rep. 363, per Cooley, J.; *Merchants' Nat. Bank v. Coates*, 79 Mo. 168; *Coates v. Doran*, 83 Mo. 337.]

In *Ætna Nat. Bank v. Fourth Nat. Bank*, *supra*, Allen, J., said: "The cases all agree that notwithstanding the agreement which bankers make with their customers to pay their checks to the amount standing to their credit, a check-holder can take

no benefit from this agreement, and that a check does not operate as a transfer or assignment of any part of the debt, or create a lien at law or in equity upon the deposit [citing *Harris v. Clark*, *Winter v. Drury*, *Dykers v. Leather M. Bank*, *supra*, and *Thornhill v. Hall*, 2 Clark & F. 22]. The principle was applied by this court in *Cowperthwaite v. Sheffield*, 3 N. Y. 243, to a bill of exchange drawn against a consignment of goods, of which the consignees and drawees were advised by letter accompanying a notice of the shipment of the goods. The court held that the bill and letter of advice did not operate as an appropriation of the proceeds of the cotton to the payment of the bill." The language of the learned judge that "the cases all agree" is certainly too strong; for some cases maintain an entirely different view: See next following note.

² In *Bromley v. Brunton*, L. R. 6 Eq. 275, a check was held, under the circumstances, to be a sufficient appropriation of the drawer's funds to constitute a valid gift *inter vivos*. The effect of a check generally is not discussed; the decision is placed upon the special circumstances, and seems to conflict with *Harris v. Clark*, *supra*. See also *In re Brown*, 2 Story, 502, 517; *Gourley v. Linsenbigler*, 51 Pa. St. 345; *Rhodes v. Childs*, 64 Pa. St. 18; *Fogarties v. State Bank*, 12 Rich. 518; 78 Am. Dec. 468; *Munn v. Burch*, 25 Ill. 35; *Chicago etc. Ins. Co. v. Stanford*, 28 Ill. 168; 81 Am. Dec. 270. [See also *Hemphill v. Yerkes*, 132 Pa. St. 545; 19 Am. St. Rep. 607;

check may undoubtedly operate in this manner as an equitable assignment when it is so drawn as to show an unmistakable intention of the drawer to transfer his exact deposit in the bank to the payee.¹

SECTION III.

ASSIGNMENT OF POSSIBILITIES, EXPECTANCIES, AND PROPERTY TO BE ACQUIRED IN FUTURE.

ANALYSIS.

- § 1285. Equitable jurisdiction under modern legislation.
- § 1286. Essential elements and grades of contingencies, expectancies, and possibilities.
- § 1287. Assignment of possibilities.
- § 1288. Assignment of personal property to be acquired in the future; *rationale* of the doctrine; *Holroyd v. Marshall*.
- § 1289. Assignment of future cargo or freight.
- § 1290. Requisites of an assignment of property to be acquired in the future.
- § 1291. Extent of the doctrine; to what property and persons it applies.

§ 1285. **Equitable Jurisdiction under Modern Legislation.**—Modern English statutes have so far changed the common law as to permit the assignment *at law* of contingent and future interests, expectancies, and possibilities coupled with an interest in real estate. The American legislation has generally been broader, and authorizes the assignment at law of such future expectancies and possibilities, when coupled with an interest, whether connected with real or with personal estate.² Neither the English nor the American statutes allow the legal assignment of mere naked possibilities or expectancies not coupled

National Bank of America v. Ind. Banking Co., 114 Ill. 483; *Pease v. Landauer*, 63 Wis. 20; 53 Am. Rep. 247; *Schollmier v. Schoendelen*, 78 Iowa, 426; 16 Am. St. Rep. 455.]

¹ *Kingman v. Perkins*, 105 Mass. 111; and see *Kahnweiler v. Anderson*, 78 N. C. 133; [or when the drawer becomes insolvent: *Schuler v. Laclede Bank*, 27 Fed. Rep. 424, per *Brewer, J.*]

² English statute of 8 & 9 Vict., c. 106, sec. 6. This statute does not

permit the legal transfer of any contingent interests or expectancies, etc., in personal property, nor of any mere naked possibility or expectancy in real estate.

Of the American statutes, that of New York (1 Rev. Stats., p. 725, sec. 35) and that of California (Civ. Code, secs. 693, 699, 700, 1045, 1046) may be taken as examples of the type mentioned in the text: See *Lawrence v. Bayard*, 7 Paige, 70, 76.

with an interest. The jurisdiction of equity continues to be exclusive over all other assignments of contingent, future, expectant interests and possibilities not embraced within this legislation.

§ 1286. **Essential Elements and Grades of Contingencies, Expectancies, and Possibilities.**—In determining the extent and limits of the two jurisdictions, legal and equitable, it is important to determine the essential elements and different grades of contingent interests, expectancies, and possibilities. It should be carefully observed at the outset that they do not include future estates which are vested. A vested remainder is as truly a present fixed property or ownership as is an estate in possession. There may be interests or so-called estates in land or chattels, based upon some existing limitation, conveyance, or will, which are future *and contingent*, as depending upon the happening of some uncertain event, or limited to some uncertain person, but which are nevertheless *interests*, and not *mere* hopes or expectancies without any existing legal foundation. The ordinary contingent remainders, executory devises, conditional limitations, and the like are illustrations. Secondly, a lower grade of future interest may be called the *potentiality* of acquiring future property from the performance of some agreement or arrangement already entered into, but which is still executory.¹ Of course, the mere hope of acquiring future property without any present source from which it may be obtained is neither an interest nor right, nor anything which has value or can be made the subject of legal relations. But when a party has entered into a contract or arrangement by the ordinary and legitimate and natural operation of which he will acquire property, his existing right thereunder is certainly not a *mere* naked hope; it is a possi-

¹ The phrase "*potential existence*" has a specific and technical meaning, in formulating the general doctrine of the law concerning the sale of personal property not yet having an *actual existence*: See *ante*, § 1236. As

used in the text above, the word "*potentiality*" is taken in a more general sense; and in this signification it has been employed in several modern decisions.

bility of acquiring property coupled with a legal interest in the contract. The cargo to be obtained or the freight to be earned by a ship on a voyage already contracted for, the wages to be earned under an existing employment, the payment to become due under an existing building contract, are familiar examples. Finally, there is a mere expectancy arising from some social or moral relation, and not based upon any limitation, trust, contract, or other legal relation, such as the hope which an heir apparent or presumptive has of inheriting his ancestor's estate, or the hope of a bequest under the will of a living friend.¹

§ 1287. **Assignment of Possibilities.**—Under the statutes described in a preceding paragraph, all future contingent interests in things real or personal, and also all possibilities, *coupled with an interest*, of acquiring property, real or personal, may be granted or assigned at law, so that the grantee or assignee acquires a legal right or interest, the enforcement or protection of which comes within the jurisdiction of the law. So far as this legislation has not been adopted, such interests and rights are assignable only in equity; and furthermore, possibilities not coupled with an interest, — *mere* possibilities or expectancies, — which are not embraced within these statutes, are, according to the general course of decision, assignable in equity for a valuable consideration; and equity will enforce the assignment when the possibility or expectancy has changed into a vested interest or possession.² The explanation is sometimes given that the

¹ See Smith on Real and Personal Property, 249: "The word 'possibility' has a general sense, in which it includes even executory interests, which are the objects of limitations [e. g., contingent remainders, etc.]. But in its more specific sense, it is that kind of contingent benefit which is neither the object of a limitation, like an executory interest, nor is founded in any lost but recoverable seisin, like a right of entry. And

what is termed a *bare* or *mere* possibility signifies nothing more than an expectancy, which is specifically applied to a mere hope of succession, unfounded in any limitation, provision, trust, or legal act whatever; such as the hope which an heir apparent or presumptive has of succeeding to the ancestor's estate."

² Warmstrey v. Lady Tanfield, 1 Ch. Rep. 29; 2 Lead. Cas. Eq., 4th Am. ed., 1530, 1559, 1605; Wright v.

assignment operates as a contract by the assignor to convey the legal estate or interest when it vests in him, and that equity will specifically enforce such contract by decreeing a conveyance.

§ 1288. Assignment of Personal Property to be Acquired in the Future—Rationale of the Doctrine.—A

Wright, 1 Ves. Sr. 409; Beckley v. Newland, 2 P. Wms. 182. The expectancy of an heir to the estate of his ancestor: Hobson v. Trevor, 2 P. Wms. 191; Stover v. Eycleshimer, 4 Abb. App. 309; 46 Barb. 84; McDonald v. McDonald, 5 Jones Eq. 211; 75 Am. Dec. 434; Fitzgerald v. Vestal, 4 Sneed, 253; [Read v. Mosby, 87 Tenn. 759.] The interest which one may take under the will of another who is still living: Bennett v. Cooper, 9 Beav. 252; In re Wilson's Estate, 2 Pa. St. 325. See also Varick v. Edwards, Hoff. Ch. 382; 11 Paige, 289; 5 Denio, 664; McWilliams v. Nisly, 2 Serg. & R. 507; 7 Am. Dec. 654; Bayler v. Comm., 40 Pa. St. 37; 80 Am. Dec. 551; Nimmo v. Davis, 7 Tex. 26; Graham v. Henry, 17 Tex. 164; Horst v. Dague, 34 Ohio St. 371; Patton v. Coen etc. Co., 3 Col. 265; The Edward Lee, 3 Ben. 114; Sedam v. Cincinnati etc. Canal Co., 2 Disn. 309; In re Irving, L. R. 7 Ch. Div. 419; [Bacon v. Bonham, 33 N. J. Eq. 614; Crum v. Sawyer, 132 Ill. 443; but see Wyllie's Appeal, 92 Pa. St. 196. Assignment of dower right before allotment: Reeves v. Brooks, 80 Ala. 26.] There is not a perfect unanimity among the authorities. Thus it has been held that the mere hope or expectation of receiving that to which the assignor had no right, and which might be withheld from him at pleasure, such as the expectancy of an heir to inherit his ancestor's estate, is not an interest capable of assignment in equity, any more than at law: See Needles v. Needles, 7 Ohio St. 432; 70 Am. Dec. 85. The Civil Code of California adopts the same rule: Secs. 700, 1045. Also, the expected proceeds of a fair intended to be held in future by a society were held not assignable, in Huling v. Cabell, 9 W. Va. 522; 27 Am. Rep. 562; and see Skipper v. Stokes, 42 Ala. 255; 94 Am. Dec. 646. But the very general conclusion of authority, English and American, is in accordance

with the doctrine of the text; and this conclusion is in strict conformity with the *principle* which distinguishes the theory of assignment in equity from that at law. In *In re Wilson's Estate*, *supra*, a woman, in consideration of marriage, conveyed to her own use during her life, and after her death to her children, all the estate which she then had or should thereafter acquire. This settlement was held to operate as an equitable assignment of property subsequently bequeathed to her by an uncle. Gibson, C. J., after citing authorities in support of the doctrine and declaring it to be well settled, adds: "Indeed, it is no more than the familiar principle that he who executes a conveyance, on valuable consideration, purporting to pass a title before it is in him, will be bound to make it good whenever he acquires it." The operation of these assignments of expectancies was succinctly stated, according to the usual theory, in two recent cases by the supreme court of Pennsylvania. In *East Lewisburg etc. Co. v. Marsh*, 91 Pa. St. 96, 99, the court said: "Equity will support assignments of contingent interests and expectancies, things which have no present actual existence, but rest in mere possibility, not, indeed, as a present positive transfer operating *in præsentia*, for that can only be of a thing *in esse*, but as a present contract to take effect and attach as soon as the thing comes *in esse*." In *Ruple v. Bindley*, 91 Pa. St. 296, 299, the court said: "An assignment for a valuable consideration, of demands, having at the time no actual existence, but which rests in expectancy only, is valid in equity as an agreement, and takes effect as an assignment when the demands intended to be assigned are subsequently brought into existence." In my opinion, this theory of an agreement is hardly adequate to explain the full doctrine, and I prefer the one given *ante*, in § 1271.

particular instance of this doctrine is that which deals with the assignment of property to be acquired in the future. I have already referred to this subject in one of its phases,—the equitable lien created by contract upon such property.¹ It is elementary, that a contract for the sale of chattels which the vendor does not own will not take effect upon the goods, when subsequently acquired, so as to pass a legal property in them to the purchaser, without some new act of the vendor after the property is acquired.² The doctrine of equity is different. A sale, assignment, or mortgage, for a valuable consideration, of chattels or other personal property to be acquired at a future time, operates as an equitable assignment, and vests an equitable ownership of the articles in the purchaser or mortgagee as soon as they are acquired by the vendor or mortgagor, without any further act on the part of either; and this ownership a court of equity will protect and maintain at the suit of the equitable assignee.³ It is sometimes said that the sale, assign-

¹ See *ante*, § 1236.

² *Lunn v. Thornton*, 1 Com. B. 379; *Gale v. Burnell*, 7 Q. B. 850; *Mogg v. Baker*, 3 Mees. & W. 195; *Head v. Goodwin*, 37 Me. 181; *Jones v. Richardson*, 10 Met. 481; *Moody v. Wright*, 13 Met. 17, 32; 46 Am. Dec. 706; *Pettis v. Kellogg*, 7 Cush. 456; *Calkins v. Lockwood*, 16 Conn. 276; 41 Am. Dec. 143; *Otis v. Sill*, 8 Barb. 102; *Hamilton v. Rogers*, 8 Md. 301; *Chapman v. Weimer*, 4 Ohio St. 481; [*France v. Thomas*, 86 Mo. 80.] With reference to the excepted case of chattels having a "potential" existence, see *ante*, note under § 1236.

³ *Holroyd v. Marshall*, 10 H. L. Cas. 191; *In re Ship Warre*, 8 Price, 269, note, 273; *Mitchell v. Winslow*, 2 Story, 630; *Seymour v. Canandaigua etc. R. R.*, 25 Barb. 284, 303; *Philadelphia etc. R. R. v. Woelpper*, 64 Pa. St. 366, 372; 3 Am. Rep. 596; *Baxter v. Bush*, 29 Vt. 465, 469; 70 Am. Dec. 429; *Page v. Gardner*, 20 Mo. 507; *Smithurst v. Edmunds*, 14 Pa. St. 408; *Williams v. Winsor*, 12 R. I. 9; *Clay v. East Tenn. etc. R. R.*, 6 Heisk. 421; [*Kimball v. Gafford*, 78 Iowa, 65;

Rutherford v. Stewart, 79 Mo. 216; *Ludlum v. Rothschild*, 41 Minn. 219.] *Holroyd v. Marshall*, *supra*, is a most important authority. One Taylor assigned the machinery in a mill in trust to secure a debt to Holroyd, and the deed covenanted that all the other machinery which should be placed in the mill during the time should vest in the trustee for the same purposes. T. procured new machinery, which was placed in the mill, and H. was notified of the fact. While this new machinery was in the mill, before H. had taken possession of it under the deed, it was levied upon under execution against T. In a suit between H. and the execution creditors, the court of chancery held that the right of the execution creditors under their levy had precedence: 2 De Gex, F. & J. 596; and see *Reeve v. Whitmore*, 4 De Gex, J. & S. 1; but the house of lords reversed this decree, and held that although there had been no new act intervening, H.'s equitable title was superior to the subsequent legal claim of the judgment creditors. "If the

ment, or mortgage, under these circumstances, operates in equity as a contract, which a court of equity will spe-

mortgage deed in the present case had contained nothing but the contract which is involved in the aforesaid covenant of Taylor, such contract would have amounted to a valid assignment in equity of the whole of the machinery and chattels in question, supposing such machinery and effects to have been in existence and upon the mill at the time of the execution of the deed. But it is alleged that this is not the effect of the contract, because it relates to machinery not existing at the time, but to be acquired and fixed and placed in the mill at a future time. It is quite true that a deed which professes to convey property which is not in existence at the time is, as a conveyance, void at law, simply because there is nothing to convey. So in equity, a contract which engages to transfer property which is not in existence cannot operate as an *immediate* alienation, merely because there is nothing to transfer. But if a vendor or mortgagor agrees to sell or mortgage property, real or personal, of which he is not possessed at the time, and he receives the consideration for the contract, and afterwards becomes possessed of property answering the description in the contract, there is no doubt that a court of equity would compel him to perform the contract, and *that the contract would in equity transfer the beneficial interest to the mortgagee or purchaser immediately on the property being acquired*. This, of course, assumes that the supposed contract is one of that class of which a court of equity would decree the specific performance. If this be so, then, immediately on the acquisition of the property described, the vendor or mortgagor would hold it in trust for the purchaser or mortgagee, according to the terms of the contract. For if a contract be in other respects good and fit to be performed, and the consideration has been received, incapacity to perform it *at the time of its execution* will be no answer, when the means of doing so are afterwards obtained. Apply these familiar principles to the present case: it follows that, immediately on the new machin-

ery and effects being fixed or placed in the mill, they became subject to the operation of the contract, and *passed in equity to the mortgagees*, to whom Taylor was bound to make a legal conveyance, and for whom he, in the mean time, was trustee of the property in question." In *Mitchell v. Winslow*, *supra*, the facts were similar, and the decisions were the same. The mortgagors in 1839, to secure a loan of money, mortgaged all the machinery, tools, and implements then in their mill, and all the machinery and tools which they might purchase for the mill during the next four years, and also all the stock which they might manufacture or purchase during that time. Before the four years had expired, and after an act of bankruptcy by the mortgagors, the mortgagees took possession under their mortgage of property, including tools, machinery, and stock purchased or manufactured by the mortgagors after the execution of the mortgage. The assignee in bankruptcy applied for an order compelling the mortgagees to deliver up to him such property, but the order was refused, on the ground that the stipulation concerning after-acquired property operated as an equitable mortgage, which would be enforced against volunteers, and any one who did not stand in the position of a *bona fide* purchaser without notice. Story, J., said it was established, under "the authorities, that wherever the parties by their contract intend to create a positive lien or charge, either upon real or upon personal property, whether it is then *in esse* or not, it attaches in equity as a lien or charge upon the particular property as soon as the assignor or contractor acquires a title thereto, against the latter, and all persons asserting a claim thereto under him, either voluntarily, or with notice, or in bankruptcy." In *Smithurst v. Edmunds*, *supra*, the lessee of a hotel assigned all the furniture in the hotel to the lessor as security for the rent, and further covenanted to assign all other furniture which he should thereafter purchase and place on the demised premises during the

cifically enforce by decreeing a legal conveyance and delivery of the property to the purchaser or mortgagee, when it is subsequently acquired by the vendor or mortgagor. This view is certainly supported by the very high authority of most able judges, such as Lord Westbury, and it is undoubtedly true in part. In my opinion, however, it fails to wholly explain the equitable doctrine and jurisdiction, since transfers of personal property to be acquired in future are constantly enforced under the operation of this doctrine where a court of equity would hardly have decreed the specific performance of the contract if it had been confined to property then in the ownership and possession of the vendor or assignor.¹ In other words, the doctrine of

term; it being declared to be the intent and agreement of the parties that when and as often as any additional furniture should be purchased and placed on the premises, it should be considered as belonging to the lessor as collateral security. The lessee purchased and placed in the hotel a large quantity of additional furniture. The contract was held to be an equitable assignment or mortgage of these chattels, which would be enforced against a subsequent execution creditor of the lessee.

¹ This question was examined by Lord Westbury in the case of *Holroyd v. Marshall*, already quoted, and he maintains the theory which I venture to criticise as insufficient. He says: "In equity, it is not necessary for the alienation of property that there should be a formal deed of conveyance. [This is most certainly correct, and it expresses one of the most radical distinctions between the principles of law and of equity with regard to the acquisition of property: See *ante*, vol. 1, §§ 366-370.] A contract for valuable consideration, by which it is agreed to make a present transfer of property, passes at once the beneficial interest, provided the contract is one of which a court of equity will decree specific performance. In the language of Lord Hardwicke, the vendor became a trustee for the vendee, subject, of course, to the contract being one to be specifically performed. And this

is true not only of contracts relating to real estate, but also of contracts relating to personal property, provided that the latter are such as a court of equity would direct to be specifically performed. A contract for the sale of goods—as, for example, of five hundred chests of tea—is not a contract which could be specifically performed, *because it does not relate to any chests of tea in particular*; but a contract to sell five hundred chests of the particular kind of tea which is now in my warehouse in Gloucester is a contract relating to specific property, and which would be specifically performed. [This statement is certainly opposed to the rule as settled in the United States, and also, as I believe, to that prevailing in England.] The buyer may maintain a suit in equity for the delivery of a specific chattel when it is the subject of a contract, and for an injunction (if necessary) to restrain the seller from delivering it to any other person." To maintain his theory concerning the operation of equitable assignments of future-acquired property, Lord Westbury is here obliged to extend the equitable jurisdiction to compel the specific performance of contracts for the purchase and sale of chattels *far beyond* the limits as generally established by the courts of England and of the United States. He virtually says, as a universal proposition, that every contract for the purchase and sale of *specific*, identified

equitable assignment of property to be acquired in future is much broader than the jurisdiction to compel the spe-

chattels, even of such merchandise as may be bought in the market, will be specifically enforced in equity; and he goes so far as to state that an injunction may be granted to restrain the vendor from violating such contract by delivering the goods to another person than the buyer. This description of the equitable jurisdiction to specifically enforce contracts concerning personal property is certainly opposed to the doctrine as settled in our own country, and I believe it is unsupported by English authorities. It is a familiar rule that contracts for the sale of chattels are never specifically enforced by courts of equity unless they involve some extraordinary elements. A contract for the sale of personal property is never specifically enforced by a court of equity, simply because the articles referred to in it are specific and identified; if enforced at all, it is because the articles are of such a peculiar and extraordinary nature that they cannot be replaced or procured in the market, and therefore the remedy of compensation would be inadequate: See *Pusey v. Pusey*, 1 Vern. 273; 1 Lead. Cas. Eq. 1109, 1114. A contract to sell five hundred chests of a particular kind of tea in the vendor's warehouse would not be specifically enforced by the American courts of equity, and I believe not by the English courts, unless the tea was of a kind which could not possibly be obtained elsewhere in the market. It is certain that a mere contract to sell the existing furniture within a certain hotel, as in *Smithurst v. Edmunds*, *supra*, or to sell the existing tools, machinery, and merchandise in a certain mill, as in *Mitchell v. Winslow*, *supra*, would not be specifically enforced by a court of equity, because the legal remedy of damages would be fully adequate; yet, as has been seen, these and similar contracts, *when relating to such chattels to be acquired in future*, are regarded as equitable assignments of the property, and *as such* are enforced by courts of equity, both English and American. Furthermore, it will be shown in the sequel that the same doctrine of equitable assignment of property to

be acquired in future is extended to present assignments of money to arise from existing contracts,—as, for example, of future wages arising under a contract of employment, of future payments to be earned in carrying out a contract for building, and the like, the future cargo or freight to be obtained or earned by a ship on a voyage contracted for, etc.; and it cannot be claimed that a court of equity would decree the specific performance of such agreements. The particular contract in the case of *Holroyd v. Marshall* would undoubtedly be specifically enforced in equity, because it was embodied in a deed of trust, and created an express trust.

The conclusion seems to me to be very plain, that the jurisdiction of equity with reference to sales, assignments, or mortgages of future-acquired property, although analogous to is not identical with nor wholly explained by the doctrine concerning the specific performance of contracts. There is something beyond the mere enforcement of an executory contract; there is an equitable right which, though at first only a possibility, becomes afterwards a full equitable ownership. It may seem presumptuous thus to differ from so able a judge as Lord Westbury, who, more than any other chancellor since Lord Hardwicke, has grasped the *principles* of equity jurisprudence; but the reasons which I have given must be weighed by the reader; to me they appear convincing. [The theory announced by Lord Westbury was criticised in *Tailby v. Official Receiver*, 13 App. Cas. (H. L.) 523.]

There are decisions which say that a mortgage of such tools, machinery, or articles as shall be subsequently used on certain premises, or placed in a certain mill, and the like, cannot be enforced and is inoperative, because the description of the chattels is too vague and uncertain to admit of the specific performance of a contract containing the same terms: See *Morrill v. Noyes*, 56 Me. 458, 471; 96 Am. Dec. 486; *Winslow v. Merchants' Ins. Co.*, 4 Met. 306; 38 Am. Dec. 368; [and see *Borden v. Croak*, 131 Ill. 68; 19 Am.

cific performance of contracts. In truth, although a sale or mortgage of property to be acquired in future does not operate as an immediate alienation at law, it operates as an equitable assignment of the *present possibility*, which changes into an assignment of the *equitable ownership* as soon as the property is acquired by the vendor or mortgagor; and because this ownership thus transferred to the assignee is equitable, and not legal, the jurisdiction by which the right of the assignee is enforced, and is turned into a legal property, accompanied by the possession, must be exclusively equitable; a court of law has no jurisdiction to enforce a right which is purely equitable. This, in my opinion, is the only correct and sufficient *rationale* of one of the most distinctively equitable doctrines in the whole scope of the equity jurisprudence.

§ 1289. **Assignment of Future Cargo or Freight.**— A particular instance of non-existing property to be acquired in future which may be equitably assigned is the future cargo to be obtained, or the future freight to be earned, by a ship during an existing voyage, or during a contemplated voyage on which she is about to depart. If a charter-party or other form of agreement has already been entered into for the contemplated voyage, the potentiality of obtaining a cargo or of earning freight seems to be a possibility coupled with an interest, and not a bare expectancy; and as such it is probably assignable even at law under statutes and decisions of many states. Whatever may be the rule at law, it is well settled that such possibility is assignable in equity; that an equitable ownership vests in the assignee as fast as the cargo is obtained or the freight is earned; and that his interest or ownership will be protected and enforced by

St. Rep. 23.] This conclusion might be correct if the rule as to the specific performance of an executory contract was to be taken as the sole criterion; but it is opposed to the overwhelming

weight of authority in reference to the validity and effect in equity of sales and mortgages of property to be acquired in future.

a court of equity.¹ In accordance with this doctrine, it has been held that a *mortgage of a railroad* and its fran-

¹ *Lindsay v. Gibbs*, 22 Beav. 522; *In re Ship Warre*, 8 Price, 269, note, 273, note; *Curtis v. Auber*, 1 Jacob & W. 506, 512; *Douglas v. Russell*, 4 Sim. 524; 1 Mylne & K. 488; *Langton v. Horton*, 1 Hare, 549; *Mitchell v. Winslow*, 2 Story, 630. In *Mitchell v. Winslow*, Mr. Justice Story gave an elaborate review of the authorities, which is so instructive that I shall quote from it: "In *re Ship Warre*, 8 Price, 269, note, Lord Eldon said that he should find it extremely difficult to say that the freight of a future voyage might not become the subject of an equitable agreement, as well as a first intended non-existing voyage, if the effect of the assignment were not to separate the freight and earnings forever from the ship itself, but only to separate it for the temporary purpose of securing a debt, and operating only upon that separation of title until that debt should be paid. Again, in *Curtis v. Auber*, 1 Jacob & W. 506, 512, where an assignment was made of the present and future earnings of a ship, Lord Eldon supported it, and said: 'In one case I think it was held that although you might assign the wool *then* growing on the backs of the sheep, you could not assign the *future* fleeces. But still it was a good equitable assignment, and rendered the future earnings liable in equity.' The same doctrine was maintained by Mr. Vice-Chancellor Shadwell in *Douglas v. Russell*, 4 Sim. 524, and his decree was afterwards affirmed by the lord chancellor (1 Mylne & K. 488) as to an assignment of freight earned and to be earned on an outward and homeward voyage, then about to be undertaken; and it was acted upon and supported in a like assignment of freight to be earned on a particular voyage in the case of *Leslie v. Guthrie*, 1 Bing. N. C. 697, 708. But the latest case, and certainly one of the most important and satisfactory in its reasoning as well as its conclusions, is that of *Langton v. Horton*, 1 Hare, 549, before Wigram, V. C. There a deed of assignment by way of mortgage was made of a whole ship and her tackle and appurtenances, and all oil and head-matter and

other cargo which might be caught and brought home in the ship on and from her then present voyage; and the question arose between an execution creditor of the assignor and the assignee, whether the assignment was good as to the future cargo obtained in the voyage after the assignment. The learned vice-chancellor decided that it was. Upon that occasion he said: 'Is it true, then, that a subject to be acquired after the date of a contract cannot, in equity, be claimed by a purchaser for value under that contract? It is impossible to doubt, for some purposes at least, that by contract an interest in a thing not in existence at the time of the contract may in equity become the property of a purchaser for value. The course to be taken by such purchaser to perfect his title I do not now advert to; but cases recognizing the general proposition are of common occurrence. A tenant, for example, contracts that particular things which shall be on the property when the term of his occupation expires shall be the property of the lessor at a certain price, or at a price to be determined upon in a certain manner. This, in fact, is a contract to sell property not then belonging to the vendor; and a court of equity will enforce such contracts when they are founded on valuable considerations, and justice requires that the contract should be specifically performed. The same doctrine is applied in important cases of contracts relating to mines, where the lessee has agreed to leave engines and machinery not annexed to the freehold which shall be on the property at the expiration of the lease, to be paid for at a valuation. The contract applies in terms to implements which shall be there at the time specified; and here neither construction nor decision has confined it to those articles which were on the property at the time the lease was granted. But it is not necessary that I should refer to such cases as these, for Lord Eldon, in the case of the *Ship Warre*, and in *Curtis v. Auber*, has decided all that is necessary to dispose of the present argument. Admitting that those cases are

chises operates as an equitable assignment of the rolling stock, — locomotives, cars, and the like, — which are acquired or manufactured by the company after the execution of the instrument, and passes an equitable ownership in or lien on such articles to the mortgagee. Other cases take a different view, and hold that the rolling stock are fixtures, and become part of the realty as soon as acquired, and that being so annexed to the soil, the *legal* title thereto is vested in the mortgagee, or that the lien of the mortgage extends to them.¹ Other illustrations of the doctrine as applied to particular transactions are given in the foot-note.²

not specifically and in terms like the principal case, they are not of less authority for the present purpose; for they remove the difficulty which has been raised in argument, and *decide that non-existing property may be the subject of valid assignment*. I will suppose the case of the owner of a ship which is going out in ballast, proposing to borrow of another party the sum of five thousand pounds to pay the crew and furnish an outfit, and agreeing that, in consideration of the loan, the homeward cargo should be consigned to the party advancing the money. It cannot reasonably be denied, in the face of the authorities I have just referred to, that a court of equity, upon a contract so framed, would hold that the party advancing the money was, as against the owner, entitled to claim the homeward cargo. And if a party may contract for the consignment of a homeward cargo, I cannot see why he may not contract with the owner of a ship engaged in the South Sea fisheries that the fruit of the voyage, the whales taken, or the oil obtained shall be his security for the amount of his advances. I cannot, without going in opposition to many authorities, throw any doubt upon the point that Birnie, the contracting party [the shipowner], would be bound by the assignment to the plaintiffs.”

¹ Pennock v. Coe, 23 How. 117; Phila. etc. R. R. v. Woelpper, 64 Pa. St. 366; 3 Am. Rep. 596; Morrill v. Noyes, 56 Me. 458, 471; 96 Am. Dec. 486; Pierce v. Emery, 32 N. H. 484;

Farmers' Loan etc. Co. v. Hendrickson, 25 Barb. 484; Seymour v. Canandaigua etc. R. R., 25 Barb. 284, 303; Phillips v. Winslow, 18 B. Mon. 431; 63 Am. Dec. 729; Clay v. East Tenn. etc. R. R., 6 Heisk. 421; [Thompson v. Valley R. R. Co., 132 U. S. 73.]

² In some of these instances the assignments are evidently valid at law: Assignments of payments to become due from the performance of an existing contract: Ruple v. Bindley, 91 Pa. St. 296; Claflin v. Kimball, 52 Vt. 6; Schreyer v. Mayor of New York, 8 Jones & S. 255; Hall v. Buffalo, 2 Abb. App. 301; Hawley v. Bristol, 39 Conn. 26; but a contract must have been entered into and be existing from which the future payments may arise: Herbert v. Bronson, 125 Mass. 475; Huling v. Cabell, 9 W. Va. 522; 27 Am. Rep. 562; Jermyn v. Moffitt, 75 Pa. St. 399; Skipper v. Stokes, 42 Ala. 255; 94 Am. Dec. 646. Assignment of future wages under existing contract of employment: In Massachusetts such assignments are required by statute to be recorded: Harrop v. Landers etc. Co., 45 Conn. 561; Angur v. New York Belting etc. Co., 39 Conn. 536; Garland v. Harrington, 51 N. H. 409; Murphy v. Murphy, 121 Mass. 167; Sullivan v. Sweeney, 111 Mass. 366; Knowlton v. Cooley, 102 Mass. 233; [Edwards v. Peterson, 80 Me. 367; 6 Am. St. Rep. 207 (assignment of future wages not yet contracted for upheld).] Assignment of future accounts and demands: East Lewisburg etc. Co. v. Marsh, 91 Pa. St. 96; Guthrie and Byles's Appeal, 92 Pa. St.

§ 1290. **Requisites of an Assignment of Property to be Acquired in the Future.** — It has been assumed through all the foregoing discussion that the instrument *does* amount to a sale, assignment, or mortgage of future-acquired property; but it should be carefully observed that every sale or mortgage dealing with future property does not necessarily have that effect; there is a plain distinction between an assignment of property to be acquired in future and a *mere power* to deal with such property. In order to create an equitable assignment, and thus let in the operation of the equitable doctrine, there must be on the face of the instrument expressly, or collected from its provisions by necessary implication, language of *present transfer* directly applying to the future as well as to the existing property, or else language importing a present *contract* or *agreement* between the parties to sell or assign the future property, or that the security of the mortgage should immediately attach to the future property, as the case may be. Where an assignment of existing chattels by way of mortgage contains a provision which simply amounts to an authority or license to the mortgagee to take possession of or to

269; *Sedam v. Cincinnati etc. Canal Co.*, 2 Disn. 309 (future tolls); but see *Skipper v. Stokes*, 42 Ala. 255; 94 Am. Dec. 646; *White v. Coleman*, 130 Mass. 316. [Assignment of future book-debts, though not limited to book-debts in any particular business, valid: *Tailby v. Official Receiver*, 13 App. Cas. (H. L.) 523, reversing 18 Q. B. Div. 25, and restoring 17 Q. B. Div. 88, overruling *In re D'Epineuil*, 20 Ch. Div. 758, and approving *In re Clarke*, 36 Ch. Div. 348.] Miscellaneous cases: *Brown v. Tanner*, L. R. 2 Eq. 806; 3 Ch. 597 (future freight); *In re Irving*, L. R. 7 Ch. Div. 419 (future dividends from a bankrupt's estate); *Swift v. Railway etc. Ass'n*, 96 Ill. 309; *Gwin v. Biel*, 70 Ind. 505 (future rents and profits); *Horst v. Dagne*, 34 Ohio St. 371 (share in the proceeds to arise from sale of real estate to be made by an executor under direction of the will); *Patten v. Coen etc. Co.*, 3 Col. 265;

People v. Dayton, 50 How. Pr. 143 (future fees of a public officer); *The Edward Lee*, 3 Ben. 114 (future salvage money by a seaman); *McClure v. McDearmon*, 26 Ark. 66. [See also *In re Turcan*, 40 Ch. Div. 5; *Peugh v. Porter*, 112 U. S. 737 (of part of a claim against a foreign government, to be determined by a commission); *Wright v. Ellison*, 1 Wall. 16; *Taft v. Masrily*, 120 N. Y. 478; *Jones v. Mayor*, 90 N. Y. 387 (assignment of claim against municipality, before the claim was by statute made legally enforceable, upheld); *Fairbanks v. Sargent*, 104 N. Y. 108; 58 Am. Rep. 490; 117 N. Y. 320 (of interest in proceeds of pending litigation); *Williams v. Ingersoll*, 89 N. Y. 508; *Phillips v. Edsall*, 127 Ill. 535; *Canty v. Lattener*, 31 Minn. 239; *Collins's Appeal*, 107 Pa. St. 590; 52 Am. Rep. 479 (pledge of interest in a partnership to be subsequently formed).]

enter and seize after-acquired property, this does not operate as an equitable assignment of the after-acquired property, nor create in the mortgagee any present equitable interest in such property. It creates, at most, only a *power*; and a power is very different from an interest,—no interest in the property arises until the power has been exercised.¹

§ 1291. **Extent of the Doctrine—To What Property and Persons It Applies.**—The general doctrine concerning sales or mortgages of after-acquired property leads to the further conclusion, that when chattels which have been mortgaged or assigned as security are sold or exchanged by the owner, the lien upon the original articles will extend to the resulting fund or the substituted goods; and this lien will be valid in equity, not only against the mortgagee, but also against any person claiming title to such fund or goods under him as a volunteer.² According to the general doctrine of equity established beyond any doubt by the highest judicial authority, the equitable assignment or the equitable lien upon property to be acquired in the future is valid and enforceable, not only against the contracting party himself, but also against subsequent judgment creditors, assignees in bankruptcy, and all other volunteers holding or claiming under him, and against subsequent purchasers from him with notice

¹ *Reeve v. Whitmore*, 4 De Gex, J. & S. 1, 16–18, per Lord Westbury; and see *Gardner v. McEwen*, 19 N. Y. 123; *Head v. Goodwin*, 37 Me. 181; *Chapin v. Cram*, 40 Me. 561; *Cudworth v. Scott*, 41 N. H. 476; *Walkerv. Vaughn*, 33 Conn. 577; *Rowan v. Sharps etc. Co.*, 29 Conn. 282; *Henshaw v. Bank of Bellows Falls*, 10 Gray, 563, 571, 572; *Rose v. Bevan*, 10 Md. 466; 69 Am. Dec. 170; *Chapman v. Weimer*, 4 Ohio St. 481; *Oliver v. Eaton*, 7 Mich. 108; *Person v. Oberteuffer*, 59 How. Pr. 339; *Williams v. Wiusor*, 12 R. I. 9.

² It is assumed, of course, that there are no statutes preventing this operation of the doctrine: *Legard v. Hodges*, 1 Ves. 477; *Collyer v. Fallon*, Turn. & R. 459; *Fletcher v. Morey*, 2 Story,

555, 566; and see *Davis v. Marx*, 55 Miss. 376; *Ball v. Vason*, 56 Ga. 264; *Arnold v. Morris*, 7 Daly, 498; *contra*, *Cowart v. Cowart*, 3 Lea, 57; [*Read v. Mosby*, 87 Tenn. 759.] A mortgage in the stock in trade of a shop-keeper which purports to cover goods substituted in place of those from time to time sold is certainly valid in equity; it creates an equitable lien upon the after-acquired property as against the mortgagor, and those claiming under him with notice or as volunteers; and the lien would undoubtedly attach to such goods even in the absence of any express clause to that effect in the instrument: *Abbott v. Goodwin*, 20 Me. 408; but see the next following note.

of the assignment or lien.¹ This operation of the equitable doctrine as against other persons than the immediate parties is, however, very much restricted and limited in most of the states by statutes.² The doctrine of equitable liens resulting from executory contracts, and that of equitable assignment of non-existing property, constitute two of the most remarkable and distinctive features of the equity jurisprudence. The particular rules which they involve are all drawn from the fundamental maxims or principles of equity; they exhibit in the most striking manner the opposing theories and methods of equity and of the law.

There is another species or phase of equitable assignment, not alluded to in this chapter, because it depends upon entirely different principles,—equitable assignment by subrogation. I have already described one important application of this peculiar species of equitable assignment in the previous chapter upon mortgages, while dealing with the right of redemption,³ and the entire doctrine will be examined in the subsequent and appropriate title of Subrogation.

¹ See *ante*, cases cited under §§ 1236, 1238. [See also *Collins's Appeal*, 107 Pa. St. 590; 52 Am. Rep. 479.]

² The statutes referred to are those concerning transfers and mortgages made with intent to hinder, delay, or defraud subsequent creditors and purchasers, and those concerning the filing or recording of chattel mortgages. The decisions giving a construction to this legislation have *virtually* abrogated the equitable doctrine in its application to subsequent creditors and purchasers. For example, in many states a chattel

mortgage which purports to cover future-acquired goods in place of those which have been sold, and which thus expressly or impliedly permits the mortgagor to sell the original chattels embraced in the instrument, while the lien is extended to the newly acquired articles, is absolutely void as against subsequent creditors of the mortgagor. This statutory system and the rules created by it belong, however, to the domain of the law, rather than to equity.

³ See *ante*, §§ 1211-1213.

CHAPTER NINTH.

CONTRACTS IN EQUITY.

SECTION I.

GENERAL DOCTRINE CONCERNING CONTRACTS.

ANALYSIS.

- § 1292. Object of this chapter.
- § 1293. What constitutes a contract.
- § 1294. Equitable contract by representations and acts.
- § 1295. Effects of a contract in equity; covenant creating an equitable servitude.
- § 1296. Effects of contracts in general.
- § 1297. Enforcement of contracts in equity.

§ 1292. **Object of This Chapter.**—I purpose to examine, in this chapter, those doctrines only concerning the nature and effects of contracts which are peculiarly and distinctively equitable. I shall not enter upon any discussion of those doctrines and rules relating to contracts which are identical both in equity and in the law.¹ The whole treatment of the subject may therefore be regarded as responsive to three fundamental questions: What constitutes a contract in equity? what primary rights of property or persons arise from a contract in equity? and what remedial rights and remedies does equity recognize and give for the enforcement of a contract? It will be more convenient to answer the latter two inquiries together, and thus to describe the effect of contracts.

§ 1293. **What Constitutes a Contract.**—Very little need be said under this head. The essential elements of a contract are the same in equity and at law. In gen-

¹ Such discussion would be unnecessary, even if my limits permitted it; since it may be found in every complete treatise on the law of contracts, and it properly forms no part of equity jurisprudence.

eral, the same rules prevail in both jurisdictions as to parties and their capacity to contract, as to consideration, and as to the assent or *aggregatio mentium*. In equity, as well as at law, "an agreement is the result of the mutual assent of two parties to certain terms, and if it be clear that there is no consensus, what may have been written or said becomes immaterial."¹ To this general agreement between the equitable and the legal rules there is one important exception and one modification. While a married woman is as incapable of binding herself personally in equity to the same extent as at law, her contracts relating to or made in view of her separate estate are so far valid and effectual that they are enforceable against such separate estate.² The modification mentioned relates to the requirement of a valuable consideration. Equity will never enforce an executory agreement unless there was an *actual* valuable consideration; and, unlike the common law, it does not permit a seal to supply the place of a real consideration. Disregarding mere forms, and looking at the reality, it requires an actual valuable consideration as essential in every such agreement, and allows the want of it to be shown, notwithstanding the seal, in the enforcement of covenants, settlements, and executory contracts of every description.³ In construing and applying the statute of frauds, in determining what contracts come within its scope, what memoranda are sufficient to

¹ Per Lord Westbury, in *Chinnock v. Marchioness of Ely*, 4 De Gex, J. & S. 638, 643. Until there is an assent on the same terms, the transaction has not passed beyond the condition of negotiation. In equity, as at the law, a contract may be regarded as an offer on one side and an assent on the other. A great number of cases have been decided by courts of equity determining whether a contract had or had not been actually concluded, and laying down particular rules as to the offer and the assent; but these rules are the same at law and in equity, and the decisions contain nothing peculiar to equity jurisprudence: See *Pomeroy*

on Specific Performance of Contracts, secs. 58-67, and cases cited.

² See *ante*, §§ 1121-1126.

³ *Cochrane v. Willis*, 34 Beav. 359; *Houghton v. Lees*, 1 Jur., N. S., 862; *Ord v. Johnston*, 1 Jur., N. S., 1063; *Jefferys v. Jefferys*, Craig & P. 138; *Hervey v. Audland*, 14 Sim. 531; *Meek v. Kettlewell*, 1 Phill. Ch. 342; 1 Hare, 464; *Stone v. Hackett*, 12 Gray, 227; *Wason v. Colburn*, 99 Mass. 342; *Estate of Webb*, 49 Cal. 541, 545; *Minturn v. Seymour*, 4 Johns. Ch. 497; *Burling v. King*, 66 Barb. 633; *Shepherd v. Shepherd*, 1 Md. Ch. 244; *Vasser v. Vasser*, 23 Miss. 378. [See also §§ 370, 1405.]

a sale by its requirements, and all other matters of detail, courts of equity and of law adopt and follow the same rules.¹ Even when equity *seems* to depart from or disregard the statute, and specially in its enforcement of verbal contracts for the sale of land which have been part performed, it is only invoking the aid of its most salutary principles for the purpose of carrying out the ultimate objects of the statute. As the primary object of the statute is to prevent frauds, mistakes, and perjuries, by substituting written for oral evidence in the most important classes of contracts, courts of equity have established the principle, which they apply under various circumstances, that it shall not be used as an instrument for the accomplishment of fraudulent purposes; designed to prevent fraud, it shall not be permitted to work fraud. This principle lies at the basis of the doctrine concerning part performance, but is also enforced wherever it is necessary to secure equitable results.²

§ 1294. **Equitable Contract by Representations and Acts.**—All ordinary contracts which consist of an intentional offer on one side and an intentional acceptance on the other, resulting in a meeting of minds upon the same terms, are thus governed by indetical rules, with reference to their creation, in law and in equity. There is, however, a form of contract peculiar to equity which is created by representations made by one party, and acts done by the other party upon the faith of such representations.³ Where an absolute unconditional representation

¹ See Pomeroy on Specific Performance of Contracts, secs. 71-95, and cases cited.

² *Jervis v. Berridge*, L. R. 8 Ch. 351; *Haigh v. Kaye*, L. R. 7 Ch. 469; and see *ante*, vol. 2, § 921, and cases cited.

³ A representation deliberately and intentionally made, for the purpose of influencing the conduct of another, and then acted upon by him, is generally the foundation of a *right* which a court of equity will enforce: Per Lord Cottenham, in *Hammersley v.*

De Biel, 12 Clark & F. 45, 61, note. But in order that the right should be that of contract, the representation must be in some sense promissory, — that is, must be something in the future. Representations of facts as existing or past may be the occasions of rights, but the rights will then be referable to fraud or to equitable estoppel, and not to contract. While the law can only give compensation in damages, equity, as has been shown, will compel the party to make his representations good by specifically

of something to be done in the future is made by one person, in order to accomplish a particular purpose, and the person to whom it is made, relying upon it, does the acts by which the intended result is obtained and purpose accomplished, a contract is thereby concluded between the parties. The representation must be absolute in its terms and positive in its nature,—something more than the mere expression of an intention depending upon contingencies, or of a wish, hope, or expectation,—otherwise the obligation, if any, which arises from it will be only moral or honorary.¹ This purely equitable form of con-

performing them: See *Bold v. Hutchinson*, 20 Beav. 250; 5 De Gex, M. & G. 558; *Neville v. Wilkinson*, 1 Brown Ch. 543.

¹ In the recent case of *Dashwood v. Jermyn*, L. R. 12 Ch. Div. 776, 781, the court formulated the doctrine as follows: "If a man makes a representation on the faith of which another man alters his position, enters into a deed, incurs an obligation, the man making it is bound to perform that representation, no matter what it is, whether it is for present payment or for the continuance of the payment of an annuity, or to make a provision by will. That in the eye of a court of equity is a contract, an engagement which the man making it is bound to perform." This statement of the rule is certainly too broad, since it includes representations of existing and past facts. This language would turn all cases of fraudulent representations and of equitable estoppels into contracts, and that courts of equity have never done. In the case of *Maunsell v. White*, 4 H. L. Cas. 1039, 1056, Lord Cottenham, speaking of the circumstances as described in the text, said: "There is no middle term, no *tertium quid*, between a representation so made to be effective for such a purpose, and a contract; they are identical." Most of the cases involving this doctrine are the results of negotiations prior to marriages: *De Beil v. Thomson*, 3 Beav. 469; 12 Clark & F. 61, note; *Hammersley v. De Beil*, 12 Clark & F. 45; *Saunders v. Cramer*, 3 Dru. & War. 87; *Moore v. Hart*, 1 Vern. 110, 201; 2 Ch. Rep. 284; *Cokes*

v. Mascal, 2 Vern. 34, 200; *Luders v. Anstey*, 4 Ves. 501; 5 Ves. 213; *Crosbie v. McDoual*, 13 Ves. 148; *Montgomery v. Reilly*, 1 Bligh, N. S., 364; 1 Dow & C. 62; *Payne v. Mortimer*, 1 Giff. 118; 4 De Gex & J. 447; *Alt v. Alt*, 4 Giff. 84; *Loffus v. Maw*, 3 Giff. 592; *Prole v. Soady*, 2 Giff. 1; *Skidmore v. Bradford*, L. R. 8 Eq. 134; *Coverdale v. Eastwood*, 15 Eq. 121. The representation must be absolute. In *Randall v. Morgan*, 12 Ves. 67, a father, previous to his daughter's marriage, refused to make a settlement, but said he should allow her the interest of two thousand pounds, and if she married, *he might bind himself to do so*, and to pay her the principal at his death. This was held not to be a contract, since the representation was not positive and absolute. Again, the representation must be made with the express purpose of bringing about the result which does actually take place, for the purpose of accomplishing an object which is on the faith of it accomplished. In *Dashwood v. Jermyn*, L. R. 12 Ch. Div. 776, a paper was signed by A and given to B, whereby, as a mark of his esteem and friendship, A agreed to allow B five hundred pounds a year, and to bequeath him on his own (A's) death ten thousand pounds. B showed this paper to Mrs. C, who thereupon consented that her daughter should marry B, and they were married. It did not appear that A knew of any such purpose when he gave the paper to B; he was ignorant of any marriage negotiation between B and Mrs. C's daughter, and Mrs. C

tract is distinguishable from the case of an offer accepted by means of acts. Where one party makes an offer, the other party may accept it by acts instead of by words, and a binding contract will result at law as well as in equity.

and daughter were utter strangers to him; and no communication concerning the marriage ever passed between A and B, or between A and Mrs. C or daughter. A paid B one installment of the five hundred pounds, and then died, making no provision whatever for B in his will. Held, that there was no contract which would be enforced against A's estate; and see *Loxley v. Heath*, 27 Beav. 523; 1 De Gex, F. & J. 489; *Jameson v. Stein*, 21 Beav. 5; *Kay v. Crook*, 3 Smale & G. 407; *Maunsell v. White*, 1 Jones & L. 539, 567.

There is another phase of the doctrine which has occasioned much judicial inquiry. When, during the negotiation, the party expressly refuses to enter into a contract, and only pledges his honor, which he insists should be accepted as sufficient, clearly no obligation arises which will be enforced by the courts; and it seems the result is the same when the representation is of a mere intention. There can be no possible doubt, where the party in so many words refuses to bind himself by a contract, and requires his pledge of honor to be taken instead of a legal obligation. But in regard to the effect of a *representation of intention* there has been a direct conflict of opinion among some of the very ablest equity judges in England. In *Maunsell v. White*, 1 Jones & L. 539, 4 H. L. Cas. 1039, a young gentleman being suitor for the hand of a young lady who was yet a minor, her guardians objected to the marriage, unless a suitable settlement was made by him. He applied to an uncle, who wrote the following answer: "My sentiments respecting you continue unalterable; however, I shall never settle any part of my property out of my power so long as I exist. My will has been made for some time, and I am confident that I shall never alter it to your disadvantage. I repeat, that my Tipperary estate will come to you at my death, unless some unforeseen occurrence should take place."

The writer thus carefully guarded every positive statement by adding some qualification or contingency; but he directed that his letter should be shown to the lady's guardians. This was done, and the marriage followed. The uncle afterwards changed his mind and failed to devise any property to his nephew. Lord St. Leonards held there was no contract, and his decision was affirmed by the house of lords. In *Money v. Jordan*, 15 Beav. 372, 2 De Gex, M. & G. 318, 5 H. L. Cas. 185, the effect of a statement of intention was fully discussed, with a great contrariety of opinion. A gentleman being about to marry, his creditor, to whom he was indebted on a bond, stated that in case of his marriage she would never trouble him about the bond; that she had given it up, and would not enforce its payment; but when asked to actually surrender the bond, she refused, insisting that her own word must be trusted, and that he might rely on her word. The gentleman was therefore married, and a suit having been subsequently brought to recover the amount of the bond, he sought to restrain the action by injunction. The relief was granted by the lower courts, but was refused in the house of lords by a majority. Lord St. Leonards held that a representation of intention might be binding, while Lord Cranworth held that it was not. See also *Moorhouse v. Colvin*, 15 Beav. 341; *Lord Walpole v. Lord Orford*, 3 Ves. 402; *Norton v. Wood*, 1 Russ. & M. 178; *Cross v. Sprigg*, 6 Hare, 552; *Viscountess Montacute v. Maxwell*, 1 P. Wms. 618; [and see *McKeegan v. O'Neill*, 22 S. C. 454.] The representation would not be enforced, under the rule of the text, unless the acts were done in reliance upon it; e. g., when it was not acted on as a reason for the marriage: *Goldicutt v. Townsend*, 23 Beav. 445; *Jameson v. Stein*, 21 Beav. 5; nor where it was waived: *Caton v. Caton*, L. R. 2 H. L. 127, 142.

In that case, however, there is an *intention* by the offerer to create a contract, and the acts of the other party are evidence of his intention to accept; so that there is a conscious, intentional meeting of minds of both the parties. But in the equitable contract by representation, the one making the representation *may not intend to be bound*, may even intend to mislead. Equity thus infers a contract, although there may not be the mutual intention, the conscious, intentional meeting of both the minds, which is an essential element of the legal conception of a contract.

§ 1295. **Effects of a Contract in Equity—Covenant Creating an Equitable Servitude.**—Before describing the general effects of contracts, I shall notice some particular agreements which create special rights in equity, where no such rights, or perhaps no rights at all, between the same parties, exist at law. When the owner of land enters into a covenant concerning it, when in a deed the grantor or the grantee covenants, or in a lease the lessor or the lessee covenants, concerning the land, concerning its use, restricting certain specified uses, stipulating for certain specified uses, subjecting it to easements or servitudes, and the like, and the land is afterwards conveyed, or sold, or passes to one who has actual or constructive notice of the covenant, the grantee or purchaser will take the premises bound by the covenant, and will be compelled in equity either to specifically execute it, or will be restrained from violating it, at the suit of the original covenantee or of any other person who has a sufficient equitable interest, although perhaps without any *legal* interest, in such performance. It makes no difference whatever, with respect to this equitable liability, and this right to enforce the covenant in equity, whether the covenant is or is not one which in law “runs with the land.”¹ Subsequent owners deriving title under deeds

¹ *Tulk v. Moxhay*, 2 Phill. Ch. 774, 777; and see *ante*, § 689, note, in which a large number of English and American cases illustrating the text are cited.

[See also *post*, § 1342.] This doctrine may be regarded as an equitable substitute for or addition to the legal rule concerning covenants running with

containing such covenants would, of course, have constructive notice thereof. This equitable right would arise

the land; or it may be explained by regarding the covenant as creating an equitable easement. The latter theory has been adopted by many able American courts. In either view, the covenant confessedly creates an equitable burden on the land, which follows it into the hands of subsequent holders, with the single qualification that a subsequent owner who acquires the *legal* estate for value and without notice takes it free from this burden. In no case is it necessary that the covenant should "run with the land," in order that the equitable easement or burden should be created. Sir George Jessel, in the passage quoted in the next following note, explains, in his usual accurate manner, the equitable operation of such covenants. He shows that notice to the subsequent owner is not an essential element to the existence of the equitable burden; want of notice simply enables the purchaser of the *legal* estate for value to be free from the burden. A subsequent holder who acquires only an equitable estate takes it subject to the burden, even in the absence of any notice.

The most frequent condition of facts to which the doctrine has been applied in the United States is the following: A, the owner of a block of land, divides it into lots for sale, and sells all these lots to different grantees. In the deed of lot No. 1 are covenants of the grantee not to build nearer the street than a certain line, or not to build certain kinds of buildings, or not to use the lots for certain purposes, or not to build so as to cut off a certain prospect, or other negative or affirmative covenants. The deeds of all the other lots contain similar covenants. Finally, the whole land is sold, so that A retains no interest whatever. The lots are afterwards conveyed to subsequent grantees. Each subsequent grantee would be charged with constructive notice of the covenants in the original deed under which he claimed title. If the subsequent grantee of any lot—say No. 1—should violate the covenants in the deed of his lot, then plainly there

would be no right of action *at law* against him in favor of the owner of any other lot; for there would be no legal privity whatsoever between them. Even if the covenants *did* run with the land, there would be no action at law, because the grantee of lot No. 2 would not be in any sense an *assignee of the reversion*,—that is, of the original covenantee's (A's) rights under the covenant. Although no action at law would lie, it is well settled that a suit in equity may be maintained by the original grantee or by the subsequent owner of any lot, to prevent a violation of the covenants by the owner of any other lot. Many of the American cases cited *ante*, in vol. 2, under § 689, arose out of such a condition of facts. The prevailing theory in the American courts is to regard the covenants as creating an equitable easement or servitude. The following cases also illustrate the doctrine: In *Clark v. Martin*, 49 Pa. St. 289, each grantee of adjoining lots covenanted not to build on the rear portion of his premises above a certain height, and this was enforced; *Schworer v. Boylston Market Ass'n*, 99 Mass. 285 (a covenant that a strip of land should not be subject to fences, and should be used as a way, was enforced by the subsequent grantee of other land benefited thereby); *Peck v. Conway*, 119 Mass. 546 (a covenant not to erect a building on the land conveyed was enforced against a subsequent grantee of the covenantor by a subsequent grantee of the original covenantee; the defendant had constructive notice from his title deeds); *Whitney v. Union R'y*, 11 Gray, 359; 71 Am. Dec. 715 (a covenant not to use the land in a certain manner enforced against a subsequent grantee charged with notice); *Parker v. Nightingale*, 6 Allen, 341; 83 Am. Dec. 632 (in conveyances of adjoining lots by same grantor, each grantee covenanted that the lot should only be used for dwelling-houses; held binding on all subsequent grantees, and enforceable by any subsequent grantee against another); *Clark v. New York Life Ins. & T. Co.*, 64 N. Y. 33 (the doctrine was

where no similar legal right, or perhaps no legal right at all, would exist between the same parties, in the following instances: 1. Where the covenant is not one which runs with the land, because in such case no legal liability whatever would rest upon the subsequent grantee or owner; 2. Where the *covenantee* having parted with all interest in the premises, there is no *legal* privity of estate or of contract between the plaintiff who seeks to enforce the covenant and the subsequent owner against whom the

recognized as fully settled; but on a construction of the language of the covenants it was held not to apply to defendant's lot). [See also *Joy v. St. Louis*, 138 U. S. 1; *Hodge v. Sloan*, 107 N. Y. 252; 1 Am. St. Rep. 816; *McMahon v. Williams*, 79 Ala. 288; *Morris v. Tuscaloosa Mfg. Co.*, 83 Ala. 565 (covenant that the land conveyed be used for residence purposes only); *Sutton v. Head*, 86 Ky. 156; 9 Am. St. Rep. 274 (covenant that no intoxicating liquors be sold on the premises in quantities less than five gallons); *Stees v. Kranz*, 32 Minn. 313 (covenant in lease against sale of liquor binding on sublessee); *Willoughby v. Lawrence*, 116 Ill. 11; 56 Am. Rep. 758 (agreement made between lessees of a driving-park and others, whereby the latter are permitted to post advertisements on the fences, is binding on assignees of the lease with notice); *Fresno C. & I. Co. v. Rowell*, 80 Cal. 114; 13 Am. St. Rep. 112 (covenant to take water for the use of the land from a certain irrigation company).] In *Brewer v. Marshall*, 19 N. J. Eq. 537, 97 Am. Dec. 679, there was a covenant by the grantor not to sell off any marl from the premises adjoining the lot conveyed. The court fully recognized and accepted the doctrine of the text, but held that this particular covenant was one which equity would not enforce; if not absolutely illegal, it closely resembled covenants in restraint of trade, which are confessedly illegal. All these cases show that the doctrine is wholly independent of the *legal* notion concerning covenants which do or do not run with the land. See also *Phoenix Ins. Co. v. Continental Ins. Co.*, 87 N. Y. 400; *Trustees etc. v. Thacher*, 87 N. Y. 311; 41 Am. Rep. 365. [But it is held that the covenant

"must relate to or concern the land or its use or enjoyment. It is not enough that a covenant affects the use of land, or the enjoyment of an easement therein, in a *collateral* way." Thus an agreement by a land-owner that the products of the land be transported exclusively by one company does not so relate to the land as to be binding on purchasers with notice: *West Virginia Trans. Co. v. Ohio River Pipe Line Co.*, 22 W. Va. 626; 46 Am. Rep. 527; *Kettle River R'y Co. v. Eastern R'y Co. of Minn.*, 41 Minn. 461.] The equitable jurisdiction to enforce such covenants is subject to one most important limitation. It is not absolute, but is governed by the same general rules which control the equitable relief of specific performance of contracts. If, therefore, the restrictive covenants in deeds of lots were made with evident reference to the continuance of the existing general condition of the property and its surroundings, but in the lapse of time there has been a complete change in the character of the neighborhood, so as to defeat the purposes of the covenants and to render their enforcement an inequitable and unjust burden on the owner of the lots, then the equitable relief will not be granted, and the plaintiff will be left to his remedy at law. For example, if the covenants restricted the grantees of lots to use for purposes of residence, and since their execution the whole neighborhood had ceased to be used for such purposes, and had been wholly given up to business, manufacturing, and the like: *Trustees etc. v. Thacher*, 87 N. Y. 311, 317, 318; 41 Am. Rep. 365, and cases cited by *Danforth, J.* [See also *Page v. Murray*, 46 N. J. Eq. 331.]

enforcement is sought, because in such case no action at law for a breach would lie; 3. Where the stipulations of the covenant and the breach thereof are of such a nature that there is no basis upon which to estimate damages. In all these cases, however, the covenant may be enforced in equity. I have, as it will be seen, continued to state the doctrine in its most general form as applying to affirmative as well as to restrictive covenants, and as rendering the owner liable to the affirmative duty of specifically performing the covenant, as well as to the negative remedy of restraint from violating it, notwithstanding the very recent decisions by the English court of appeal holding that the doctrine applies only to restrictive covenants, and does not extend to those which stipulate for affirmative acts.¹ In my opinion, the doc-

¹ Haywood v. Brunswick etc. Soc., L. R. 8 Q. B. Div. 403 (covenant to build and keep in repair some houses); London etc. R'y v. Gomm, L. R. 20 Ch. Div. 562, 582, 583, 586, 587. In this case the covenant was to resell the land. Jessel, M. R., said (pp. 582, 583): "With regard to the argument founded on *Tulk v. Moxhay*, that case was very much considered by the court of appeal in *Haywood v. Brunswick Benefit Society*, and the court there decided that they would not extend the doctrine of *Tulk v. Moxhay* to affirmative covenants, compelling a man to lay out money or do any other act of what I may call an active character, but that it was to be confined to restrictive covenants. Of course, that authority would be binding upon us, if we did not agree to it, but I most cordially accede to it. I think we ought not to extend the doctrine of *Tulk v. Moxhay* in the way suggested here. The doctrine of that case, rightly considered, appears to me to be either an extension in equity of the doctrine of *Spencer's Case* to another line of cases, or else an extension in equity of the doctrine of negative easements; such, for instance, as a right to the access of light, which prevents the owner of the servient tenement from building so as to obstruct the light. The covenant in *Tulk v. Moxhay* was affirmative in its terms, but

was held by the court to imply a negative. Where there is a negative covenant expressed or implied, — as, for instance, not to build so as to obstruct a view, or not to use a piece of land otherwise than as a garden, — the court interferes on one or other of the above grounds. *This is an equitable doctrine*, establishing an exception to the rules of the common law, which did not treat such a covenant as running with the land, and it does not matter whether it proceeds on analogy to a covenant running with the land or on analogy to an easement. The purchaser took the estate *subject to the equitable burden*, with the qualification that if he acquired the legal estate *for value and without notice*, he was freed from the burden. *That qualification, however, did not affect the nature of the burden*; the notice was required merely to avoid the effect of the legal estate, *and did not create the right*; and if the purchaser took only an equitable estate, he took subject to the burden, whether he had notice or not." Hannen, J. (p. 586), and Lindley, J. (p. 587), reached the same conclusion. The numerous English cases cited in vol. 2, under § 689, contain no such limitation. While in most instances the covenants undoubtedly were restrictive or negative merely, yet in several cases the doctrine was applied to covenants in express terms requiring affirmative

trine has been fully established, in its most general form, without such limitation, by the overwhelming weight of authority, English and American.

§ 1296. **Effects of Contracts in General.**—As has already been stated, one of the most distinctive features of equity jurisprudence is its peculiar mode of viewing executory contracts, and the rights arising therefrom. Where a contract stipulates merely for personal acts to be done or omitted, the equitable and the legal notions as to its effects are the same; the resulting rights are strictly personal in equity as well as at law. Where an executory contract deals with or relates to property, real or personal, as its subject-matter, its operation in equity may be the same as at law; under proper circumstances courts of equity may treat the resulting rights and obligations as purely personal.¹ But, in addition to this legal aspect, equity always treats such executory contracts as creating specific, present, equitable interests in the lands, chattels, funds, or other property to which they relate. The na-

acts; e. g., to keep up a sea-wall: *Morland v. Cook*; to erect a pump and reservoir: *Cooke v. Chilcott*; and in other cases the covenant was in negative terms, but an injunction restraining its violation necessarily required the doing of affirmative acts; e. g., prohibiting building, except in a specified manner: *Coles v. Sims*; to use gardens in a certain manner: *Western v. Macdermot*; by a lessee of an inn to buy all his beer from the lessor: *Luker v. Dennis*. These, and American cases to the same effect, show, as it seems to me, that the rule in its general scope as stated in the text had been fully settled. I doubt whether American courts would feel themselves bound to follow these latest English decisions which put a limitation upon the rule hitherto unknown. It is proper to remark that the first of these two cases, in which the limitation was for the first time laid down, was an action at law for damages, decided by a court composed of judges trained in legal rather than in equitable doctrines. Finally, the limitation, in my opinion, is wholly arbitrary, for, on

principle, there seems to be no distinction between the equitable operation and effect of affirmative and of restrictive covenants. See, however, as partially sustaining this limitation, *Brewer v. Marshall*, 19 N. J. Eq. 537; 97 Am. Dec. 679.

¹ That is, an executory contract relating to money or to other property may, in equity, as at law, be treated as imposing only the personal obligation of ordinary indebtedness, as creating only the personal right to a pecuniary payment, and as enforced only by the recovery of a general pecuniary judgment. This purely legal aspect of contracts is, however, very uncommon. In almost all cases where there is a personal indebtedness and a pecuniary recovery, as in suits for an accounting, and the like, the ultimate remedy is made more efficient by the notion of some equitable interest, lien, or charge, or some trust attaching to specific funds of money or of securities, by which the actual relief consists in reaching and appropriating such specific fund or other form of property.

ture and extent of the equitable interest depends, of course, upon the provisions of the particular contract; it may be an equitable estate, the virtual, beneficial ownership, or it may be a specific lien or charge, or it may be a burden analogous to a servitude. All the distinctively equitable doctrines with regard to the rights and liabilities arising from and remedies for the enforcement of such contracts are the necessary and logical deductions from this fundamental conception: that an executory agreement creates specific equitable interests in the property which is its subject-matter.¹

§ 1297. **Enforcement of Contracts in Equity.**—In the enforcement of contracts, equity may be governed by very different considerations from those which are indispensably requisite at law. The law holds parties strictly and literally to the very terms of their agreements, and demands from the plaintiff an exact performance of all the stipulations on his part which are essential to a recovery, or else no legal right of action can accrue to him on the contract. Also, no action at law can be maintained *upon a contract* which is not valid in compliance with rules of the common law or of statute. Both of these stringent requirements are relaxed in equity, and contracts may be enforced, where, from some default, or some lack of legal formality or condition, no action at law can be maintained. There are two general classes of such cases. The first embraces those contracts in which the plaintiff, by reason either of some extrinsic circumstance or of his own default, has not performed, or even cannot perform, all the conditions on his part necessary to be performed in order that an action at law may be maintained thereon, but which nevertheless a court of equity

¹ This equitable conception and its results have been already fully described in previous chapters, and the discussion need not be repeated. With regard to the conception in general and the equitable estates created, see *ante*, vol. 1, §§ 365-369,

372; on conversion by contracts, *ante*, vol. 3, §§ 1159, 1161, 1163; on liens created by contract, *ante*, vol. 3, §§ 1235-1237. Other illustrations will be given in the subsequent chapter on the specific performance of contracts.

regards as binding and will enforce.¹ The second class embraces contracts which are not valid in law, which the law does not treat as contracts at all, but which equity regards as binding in conscience, and enforces by its remedy of specific performance. The legal invalidity may result from the non-observance of some statutory requirements concerning the mode of making the agreement, or from certain doctrines of the common law, irrespective of statute, affecting its terms or its subject-matter. By far the most important and numerous species of contracts contained in this class are those which, being void at law under the statute of frauds, have been partly performed by the plaintiff, and will therefore be wholly executed *in specie*, at his suit and for his benefit, by courts of equity.² Among the agreements which the original

¹Equity distinguishes between those terms and stipulations which are of the essence of a contract, and those which are not, and does not permit the defendant to set up a breach of the latter as complete bar to all relief, or a sufficient reason for wholly refusing to execute the agreement. In these cases, no action at law can be maintained; but equity, if the contract is otherwise a proper one, will compel a performance, with such compensations or allowances as may be just to the parties. In *Mortlock v. Buller*, 10 Ves. 292, 305, 306, Lord Eldon said: "Lord Thurlow used to refer this doctrine of specific performance to this: that it is scarcely possible that there may not be some small mistake or inaccuracy, as that a leasehold interest, represented to be for twenty-one years, may be for twenty years and nine months; some of these little circumstances that would defeat an action at law, and yet lie so clearly in compensation that they ought not to prevent the execution of the contract." See also *Stewart v. Alliston*, 1 Mer. 26, 32. Even when the partial failure or inability to perform results directly from the plaintiff's own default, the contract will still be enforced, if the relief is demanded by equitable principles; as, for example, when the plaintiff has performed sub-

stantially, but not with such exactness, in respect to all the terms, that he could maintain an action at law; or where the plaintiff has failed to perform at or within the stipulated times, in cases in which time is not of the essence of the contract: *Davis v. Hone*, 2 Schoales & L. 341, 347; *Voorhees v. De Meyer*, 2 Barb. 37; *Coale v. Barney*, 1 Gill & J. 324; *McCorkle v. Brown*, 9 Smedes & M. 167; *Shaw v. Livermore*, 2 G. Greene, 338. [See also *Gillespie Tool Co. v. Wilson*, 123 Pa. St. 19; *Johnson v. Roanoke etc. Co.*, 82 Va. 284; *Croft v. Peck*, 64 Tex. 627.]

²The theory upon which equity proceeds in administering its specific relief in such cases is, that the defendant, having permitted the plaintiff to treat the agreement as binding, and to do positive acts based upon such assumption, it would be a fraud in him to repudiate his undertaking, and to set up the statute as an obstacle in the way of its completion: See *Buckmaster v. Harrop*, 7 Ves. 341, 346; *Mundy v. Jolliffe*, 5 Mylne & C. 177; *London etc. R'y v. Winter, Craig & P.* 57; *Earl of Lindsey v. Great Northern R'y*, 10 Hare, 664, 700; *Kirk v. Bromley Union*, 2 Phill. Ch. 640; *Gough v. Crane*, 3 Md. Ch. 119; 4 Md. 316; *Phillips v. Thompson*, 1 Johns. Ch. 131; *Lord v. Underdunk*,

common law treated as invalid, irrespective of statutes, but which equity, in the application of its conscientious principles, regards as binding, and enforces by granting its relief of specific performance, are the following: Agreements for the assignment or disposition of a possibility, expectancy, or hope of succession;¹ agreements to assign things in action;² executory agreements made between a man and a woman who afterwards marry, which then became absolutely void at common law, but which equity may specifically enforce against either the husband or wife at the suit of the other;³ contracts made by an owner to convey his land at some future day named, who dies before the time for completion arrives.⁴ In all of these cases, however, modern statutes have changed the legal rules, so that such contracts would be valid at law.

1 Sand. Ch. 46; *Jervis v. Smith*, Hoff. Ch. 470. The verbal contract which is part performed must be such that the court would decree its specific enforcement if it were in writing: *Kirk v. Bromley Union*, *supra*.

¹ Although void at the common law, such contracts are enforced in equity, if free from overreaching and fair in all respects: See *ante*, § 1287; *Wiseman v. Roper*, 1 Ch. Rep. 158; *Beckley v. Newland*, 2 P. Wms. 182; *Hyde v. White*, 5 Sim. 524; *Lyde v. Mynn*, 1 Mylne & K. 683; *Price v. Winston*, 4 Munf. 63.

² Agreement to assign certain debts: *Adderley v. Dixon*, 1 Sim. & St. 607; *Wright v. Bell*, 5 Price, 325; *Cutting v. Dana*, 25 N. J. Eq. 265; *Tuttle v. Moore*, 16 Minn. 123; *Woodward v. Harris*, 3 Sand. 272; *Hughes v. Piedmont etc. Ins. Co.*, 55 Ga. 111; to sell an annuity: *Withy v. Cottle*, 1 Sim. & St. 174; *Kenney v. Wexham*, 6 Madd. 355, 357; *Clifford v. Turrell*, 1 Younge

& C. Ch. 138; to sell a patent right: *Cogent v. Gibson*, 33 Beav. 557; *Corbin v. Tracy*, 34 Conn. 325; *Somerby v. Buntin*, 118 Mass. 279; 19 Am. Rep. 459; *Binney v. Annan*, 107 Mass. 94; 9 Am. Rep. 10; *Ely v. McKay*, 12 Allen, 323.

³ [*Johnston v. Spicer*, 107 N. Y. 185;] *Cannel v. Buckle*, 2 P. Wms. 243; *Acton v. Acton*, Prec. Ch. 237; *Gould v. Womack*, 2 Ala. 83; *Croswaigh v. Hutchinson*, 2 Bibb, 407; 5 Am. Dec. 619.

⁴ At common law this contract is rendered impossible; the administrator cannot convey, because he acquires no interest whatever in the land, and no legal obligation devolves upon the heir. Equity enforces the contract against the heir: *Milnes v. Gery*, 14 Ves. 400, 403, in argument of counsel; *Newton v. Swazey*, 8 N. H. 9; *Saunders v. Simpson*, 2 Har. & J. 81; *Glaze v. Drayton*, 1 Desaus. Eq. 109; *Wilkinson v. Wilkinson*, 1 Desaus. Eq. 201.

SECTION II.

EQUITABLE DEBTS.

ANALYSIS.

§ 1298. General nature.

§ 1299. Husband's liability for wife's necessities.

§ 1300. Liability for money advanced to pay debts of a person incapable of contracting.

§ 1301. On death of one joint debtor.

§ 1302. On death of a joint surety.

§ 1298. **General Nature.**—A debt, in its most general conception, is a personal liability for a definite sum of money, arising out of contract express or implied, or obligation in the nature of contract. A debtor is one who is personally liable for the payment of such sum, and from whom payment can be enforced by means of a *personal* pecuniary judgment. If the debt is recognized by the law, and can be recovered by an action at law, it is a legal debt; if it is *only* recognized by equity, and not by the law, and only be recovered by a suit in equity, the debt is equitable. Where there is no personal liability, and no *personal* pecuniary judgment can be recovered either at law or equity, there is no debt nor debtor.¹ There are many instances in which a pecuniary liability exists in equity, which may not perhaps be recognized at law, growing out of trust relations, where funds of money impressed with a trust may be reached *as specific, identified funds*, and not as a general *personal* indebtedness; and the jurisdiction at law, by means of the action of assumpsit for money had and received, has been so enlarged, that nearly all cases of *personal* indebtedness, which do not directly conflict with some positive rule of the law, may be enforced by legal action. I shall therefore

¹ Ex parte Jones, L. R. 12 Ch. Div. 484, 488, 489, 490, holding that a married woman is not a "debtor," although her contracts may be enforced

against her separate property in equity; see extracts from opinions of James, Brett, and Cotton, LL. JJ., ante, under § 1122.

merely state a few particular cases in which the indebtedness is wholly equitable, and no liability at all would exist at law, for the purpose of illustrating the general principle.

§ 1299. **Husband's Liability for Wife's Necessaries.** — Questions as to the husband's liability for necessities furnished to his wife usually arise at law and belong to the jurisdiction of law courts. It is, however, settled by the highest authority, ancient and modern, that where a husband has deserted his wife, and a third person advances money to her for the purpose of her maintenance, and the money has been actually applied to such purpose, an equitable, although not a legal, debt is thereby created; the person making the advance is entitled in equity, though not at law, to recover the amount from the husband.¹ This rule applies not only where the husband

¹ Harris v. Lee, 1 P. Wms. 482; Marlow v. Pitfield, 1 P. Wms. 558; Jenner v. Morris, 3 De Gex, F. & J. 45, 51, 52, 55, overruling May v. Skey, 16 Sim. 588; Deare v. Soutten, L. R. 9 Eq. 151, 154. In Jenner v. Morris, the decision by Lord Chancellor Campbell and Turner, L. J., was based upon principle, and upon the authority of the older cases in 1 Peere Williams. One passage in the opinion of Turner, L. J., relating to the general jurisdiction of equity, is so instructive and so broad in its application that I shall quote it (p. 55): "We are thrown back, therefore, upon the old authorities. In considering them, it must be borne in mind that the decrees of the court very often furnish the best evidence which now can be had of the extent of its jurisdiction and of the principles by which it is guided, and that in disregarding the older decisions of the court there is great danger of breaking in upon its principles. This case seems to me to present a remarkable instance of that danger. In Lord Redesdale's treatise on pleading I find this statement (Mitford's Eq. Pl., 4th Eng. ed., 112; 5th ed., 134): 'Cases frequently occur in which the principles by which the ordinary courts are guided in their administration of justice give a right; but from accident, or

fraud, or defect in their mode of proceeding, those courts can afford no remedy, or cannot give the most complete remedy; and sometimes the effect of a remedy attempted to be given by a court of ordinary jurisdiction is defeated by fraud or accident. In such cases courts of equity will interpose to give those remedies, which the ordinary courts would give if their powers were equal to the purpose, or if their mode of administering justice could reach the evil; and also to enforce remedies attempted to be given by those courts when their effect is so defeated.' It is therefore an ancient head of the jurisdiction of this court to interpose in cases in which the principle of the law gives a right, but the forms of the law do not give a remedy"; and he goes on to show that the law, *on principle*, admits a right of the creditor, but according to the rules of form there is no legal action by which such right can be enforced. It is well settled that those who furnish necessities *directly* to a deserted wife may sue the husband at law for their value, she being his agent to that extent, with uncountermandable authority to bind him: Gilman v. Andrus, 28 Vt 241; 67 Am. Dec. 713; Walker v. Loughton, 31 N. H. 111; Rumney v. Keyes, 7 N. H. 571; Kimball v. Keyes, 11 Wend.

has actually left and deserted his wife, but also where the separation has been mutual, if without her fault, and without any provision by the husband for her support. The principle which underlies this rule has been extended in some states so far as to assert a general jurisdiction of equity to compel the maintenance of a deserted wife out of the husband's property under the name of "alimony."¹

§ 1300. **Liability for Money Advanced to Pay Debts of a Person Incapable of Making a Contract.** — This particular rule concerning married women may be generalized. Wherever money is loaned or advanced to a person under disabilities and incapacitated from making a binding contract, as to an infant, a lunatic, and the like, and the money is thus loaned or advanced and actually used for the purpose of paying for necessities or necessary expenses of the party borrowing, although no legal debt arises, and the lender can maintain no action at law to recover back the amount, yet, *since his money was advanced and used for the purpose of paying debts which would be recoverable at law*, he can sue in a court of equity, and stand in the place of those creditors whose debts had been so paid, and recover back the amount of his advance. An equitable debt thus arises under the principle of subrogation.² It might perhaps be said that all cases in which

33; but courts of law do not recognize any privity between the husband and a person who has supplied his wife with money to purchase necessities. In *Deare v. Soutten*, Lord Romilly, M. R., held the same doctrine.

¹ See *ante*, § 1120, and cases cited.

² *Marlow v. Pitfield*, 1 P. Wms. 558; In re National etc. Building Soc., L. R. 5 Ch. 309, 313, per Giffard, L. J. In this latter case the court said: "There was no legal debt, and if no legal debt, the next thing to inquire is, whether there was an equitable debt. A class of cases has been referred to on that subject, the principal of which are In re German Mining Co., 4 De Gex, M. & G. 19, and In re Cork etc. R'y, L. R. 4 Ch.

748, the latter of which was before the lord chancellor and myself a short time ago. I have no hesitation in saying that those cases have gone quite far enough, and that I am not disposed to extend them. They were decided upon a principle recognized in old cases, beginning with *Marlow v. Pitfield*, where there was a loan to an infant, and the money was spent in paying for necessities, and in another, of a more modern date, where there was money actually lent to a lunatic, and it went in paying expenses which were necessary for the lunatic. In such cases it has been held that although the party lending the money could maintain no action at law, yet, inasmuch as his money had gone to

parties are entitled to sue in equity and recover mere pecuniary demands, upon the principle of subrogation or equitable assignment, were examples of equitable debts.

§ 1301. **On Death of One Joint Debtor.**—The common-law rule had been firmly settled from an early day, that on the death of one or more of several joint debtors, the liability of the deceased absolutely ceased; no action at law could be maintained against their personal representatives; the debt remained that of the survivors only, and they alone could be sued. This rule was a necessary conclusion, drawn by processes of verbal logic, from the intensely technical conception of a *joint* liability or right at the common law, as one, single, indivisible right or liability.¹ There is, however, an equitable debt. The equitable rule is now settled in England, professedly based upon the notion that all joint liabilities at law are in equity joint and several, that the creditor has his option at all times either to sue the survivors alone at law, or to sue the representatives of the deceased debtor in equity, whether the survivors are solvent or not, and without attempting, much less exhausting, any legal remedy against the survivors; and this doctrine has been adopted in some of the American states.² The prevailing American rule is

pay debts which would be recoverable at law, he could come into a court of equity and stand in the place of those creditors whose debts had been so paid. This is the principle of those cases. It is a very clear and definite principle, and a principle which ought not to be departed from." The doctrine has also been extended, with great caution and within narrow limits, to cases where money has been loaned to a corporation, by a transaction which was *ultra vires* and therefore void, for the purpose of paying off existing and valid liabilities of the corporation. Although no legal debt was thereby created against the corporation, it has been held that an equitable debt arose, so that the loan could be recovered back in equity: *In re German Mining Co.*; *In re Cork etc. Ry*, *supra*; *Troup's Case*, 29 Beav.

353; *Hoare's Case*, 30 Beav. 225; *In re Magdalena etc. Co.*, Johns. 690; but see *In re National etc. Soc.*, *supra*.

¹ To use a homely metaphor, a joint right was not a bundle of separate rights united together by some external bond; it was one single right, although it might belong to several parties as creditors, or might impose a liability upon several as debtors.

² Where the personal representatives of the deceased are thus sued in equity, the survivors must also be joined as defendants: *Wilkinson v. Henderson*, 1 Mylne & K. 582; *Braithwaite v. Britain*, 1 Keen, 206, 219; *Brown v. Weatherby*, 12 Sim. 6, 11; *Devaynes v. Noble*, 2 Russ. & M. 495; *Thorpe v. Jackson*, 2 Young & C. 553, 561; *Freeman v. Stewart*, 41 Miss. 138. This particular rule has

not so broad. In most of the states, where no statute has made a change, upon the death of one or more joint debtors, obligors, or promisors, a legal action can be maintained against the survivors alone, and in such action the personal representatives of the deceased cannot be made defendants for any purpose. An equitable action can be maintained against the executors or administrators of the deceased when, and only when, either the legal remedy against the survivors has been exhausted, or such remedy would be absolutely useless. In such equitable action, therefore, the plaintiff must aver and prove either the recovery of a judgment and the issue and return of an execution thereon unsatisfied, against the survivors, or else that the survivors are utterly insolvent.¹ In several of the states which have adopted the reformed procedure, either from a judicial interpretation of its general principles or from express provisions of the codes, this particular jurisdiction of equity has been wholly abrogated; a legal action may be brought at once against the surviving

sometimes been referred to the general jurisdiction over mistake, on the ground that *the parties were mistaken in making their contract joint!* There cannot, of course, be any real element of truth in such an explanation. The early chancellors in laying down the rule so diametrically opposed to a favorite dogma of the common law may have ventured upon some such explanation to account for their jurisdiction; but it is clearly verbal and formal. The true ground of the jurisdiction must be found, I think, in the general principle laid down by Turner, L. J., quoted in the preceding note under § 1299.

¹In a large portion of the states which have adopted the reformed procedure, it is held that the codes have not changed either of these conclusions, but the same rules prevail under the code: *Voorhis v. Childs's Ex'r*, 17 N. Y. 354; *Richter v. Poppenhausen*, 42 N. Y. 373; *Pope v. Cole*, 55 N. Y. 124; 14 Am. Rep. 193; *Scholey v. Halsey*, 72 N. Y. 578;

Lane v. Doty, 4 Barb. 530, 534; *Morehouse v. Ballou*, 16 Barb. 289; *Bentz v. Thurber*, 1 Thomp. & C. 645; *Livermore v. Bushnell*, 5 Hun, 285; *Yates v. Hoffman*, 5 Hun, 113; *Masten v. Blackwell*, 8 Hun, 313; *Maples v. Geller*, 1 Nev. 233, 237, 239; *Fowler v. Houston*, 1 Nev. 469, 472; *Lanier v. Irvine*, 24 Minn. 116; *Cairns v. O'Brien*, 40 Wis. 469; *Jones v. Estate of Keep*, 23 Wis. 45; *People v. Jenkins*, 17 Cal. 500; *Humphreys v. Crane*, 5 Cal. 173; *May v. Hanson*, 6 Cal. 642; but see *Bank of Stockton v. Howland*, 42 Cal. 129; *Barlow v. Scott's Adm'rs*, 12 Iowa, 63; *Pecker v. Cannon*, 11 Iowa, 20; *Marsh v. Goodrell*, 11 Iowa, 474; *Williams v. Scott's Adm'rs*, 11 Iowa, 475; *County of Wapello v. Bigham*, 10 Iowa, 39; 74 Am. Dec. 370; *Childs v. Hyde*, 10 Iowa, 294; 77 Am. Dec. 113 (these Iowa cases were decided prior to the Code of 1860). The rule and the foregoing decisions in New York seem to be abrogated by the new Code of Civil Procedure, sec. 758.

joint debtors and the administrators or executors of the deceased.¹

§ 1302. **Death of a Joint Surety.** — The reasons of the equitable doctrine described in the last paragraph do not apply when the deceased joint debtor is a surety. It is therefore well settled, both at law and in equity, that where a principal debtor and a surety are jointly bound by the contract to the creditor, and the surety has received no benefit from the consideration, on the surety's death his liability is completely ended and gone. His estate is liable neither at law nor in equity.² This result only fol-

¹ *Braxton v. State*, 25 Ind. 82; *Eaton v. Burns*, 31 Ind. 390; *Voris v. State ex rel. Davis*, 47 Ind. 345, 349; *Myers v. State ex rel. McCray*, 47 Ind. 293, 297; *Hays v. Crutcher*, 54 Ind. 260; *Hudelson v. Armstrong*, 70 Ind. 99; *Owen v. State*, 25 Ind. 107; *Klussman v. Copeland*, 18 Ind. 306. In Indiana there is no express provision of the code, and the decision is based upon the general provisions abolishing the distinctions between legal and equitable actions concerning parties, and providing for a severance in the judgment. In *Braxton v. State*, *supra*, the action was against three survivors and the administrators of the deceased obligors on a bond. The court said: "It was manifestly the intent of the legislature in the adoption of these provisions to afford as far as possible a simple and direct means of bringing all the parties having an interest in the controversy before the court, and of settling all their rights in a single litigation, and thereby to avoid a multiplicity of suits." The same result was reached in Ohio, in *Burgoyne v. Ohio Life Ins. etc. Co.*, 5 Ohio St. 586, 587, per Ranney, C. J. I venture to express the opinion that these decisions are in complete accordance with the spirit and intent of the reformed procedure. In the following states the same result is reached by express provisions of the codes: Iowa: Code 1860, sec. 2764; Rev. 1873, sec. 2550; *Sellon v. Braden*, 13 Iowa, 365; Kentucky: Code, sec. 39; Missouri: Code, art. 1, sec. 7; Kansas: Gen. Stats. 1868, c. 21, secs. 1-4; New York: Code Civ. Proc. (new code), sec. 758. The same result fol-

lows from the provisions of the Georgia Code, although it does not adopt the reformed procedure: *Anderson v. Pollard*, 62 Ga. 46. [See further, on the general subject of this paragraph, § 409.]

² *Simpson v. Field*, 2 Ch. Cas. 22; *Sumner v. Powell*, 2 Mer. 30; *Turn. & R.* 423; *Other v. Iveson*, 3 Drew. 177; *Richardson v. Horton*, 6 Beav. 185; *Jones v. Beach*, 2 De Gex, M. & G. 886; *Wilmer v. Currey*, 2 De Gex & S. 347; *Getty v. Binsse*, 49 N. Y. 385; 10 Am. Rep. 379; *Wood v. Fisk*, 63 N. Y. 245; 20 Am. Rep. 528; *Risley v. Brown*, 67 N. Y. 160; *Hauck v. Craighead*, 67 N. Y. 432; *Davis v. Van Buren*, 72 N. Y. 587, 588, 589; *Randall v. Sackett*, 77 N. Y. 480; *United States v. Price*, 9 How. 83, 92; *Harrison v. Field*, 2 Wash. (Va.) 136; *Pickersgill v. Lahens*, 15 Wall. 140; *Weaver v. Shryock*, 6 Serg. & R. 262, 264; *Waters's Rep's v. Riley's Adm'r*, 2 Har. & G. 305, 310; 18 Am. Dec. 302. In *Getty v. Binsse*, *supra*, one La Farge and one Lahens were joint makers of a note to plaintiff for fifteen thousand dollars, La Farge being surety. He was under no liability to the plaintiff irrespective of or prior to the making the note. He died, and this action in equity was brought against his executor, Binsse, to recover the amount of the note. The court said (p. 388): "It is a well-settled principle that in case of a joint obligation, if one of the obligors dies, his representatives are at law discharged, and the survivor alone can be sued: *Towers v. Moor*, 2 Vern. 98; *Simpson v. Vaughan*, 2

lows when the undertaking of the principal debtor and the surety is strictly joint. The very reasons on which it rests prevent it from applying where the undertaking is joint and several or several. It should be observed, however, that by suing all the debtors and obtaining a judgment the creditor might elect to treat a joint and several obligation as a strictly joint one.¹ Furthermore, the death of one of several co-sureties on a joint undertaking does not at all relieve his estate from the liability of contribution among the co-sureties.²

Atk. 31; *Bradley v. Burwell*, 3 Denio, 61. It seems to be equally well settled that if the joint obligor so dying be a surety, not liable for the debt, irrespective of the joint obligation, his estate is absolutely discharged both at law and in equity, the survivor only being liable. In such a case, where the surety owed no debt outside and irrespective of the joint obligation, the contract is the measure and the limit of his obligation. He signs a joint contract, and incurs a joint liability, and no other. Dying prior to his co-maker, the liability all attaches to the survivor." In *United States v. Price*, *supra*, there was a *joint and several bond*, but judgment had been recovered against *all* the obligors, and afterwards the surety died. Held, that as the creditor had elected to treat the obligors as joint debtors, he could not now proceed in equity against the surety's estate. This rule and the whole doctrine of the common law upon which it is based seem to have been abrogated in New York by the new Code of

Civil Procedure, sec. 758); but this legislation does not affect contracts made prior to its enactment: *Randall v. Sackett*, 77 N. Y. 480. In Indiana the rule given in the text has never been recognized at all: *Hudelson v. Armstrong*, 70 Ind. 99; *Voris v. State*, 47 Ind. 345, 349, 350; see also *Royal Ins. Co. v. Davies*, 40 Iowa, 469; 20 Am. Rep. 581. [It was held in *Richardson v. Draper*, 87 N. Y. 344, that where the surety received some incidental benefit from his obligation, his estate should be held liable; as where he guaranteed the bonds of a corporation of whose stock he was the chief owner.]

¹ *United States v. Price*, 9 How. 83, 92.

² *Dussol v. Bruguere*, 50 Cal. 456. This decision is in entire accordance with the doctrine as settled by the English cases. If, therefore, one co-surety, either before or after the death, pays the debt, he is entitled to a contribution from the estate of the deceased co-surety.

CHAPTER TENTH.

PERSONS NOT SUI JURIS.

SECTION I.

INFANTS.

ANALYSIS.

- § 1303. Questions stated.
- § 1304. Origin of the equitable jurisdiction over infants.
- § 1305. How jurisdiction is acquired; infant made a "ward of court."
- §§ 1306-1307. Extent of the jurisdiction.
- § 1306. Appointment of guardians.
- § 1307. Custody of infants; custody of parents, when controlled.
- §§ 1308-1310. How the jurisdiction is exercised.
- § 1308. Supervision of the guardian.
- § 1309. Management of property.
- § 1310. Marriage of infant ward.

§ 1303. **Questions Stated.** — I shall not in this chapter enter upon any discussion of the rights, powers, capacities, and liabilities of infants; nor shall I treat of the different kinds of guardians, their modes of appointment, their powers, duties, and liabilities.¹ I purpose merely to describe in a very brief manner the inherent original jurisdiction of equity, as a part of its general jurisprudence, and independent of the statutory legislation concerning the same subject-matters, over the persons and estates of infants, the general nature and extent of that jurisdiction, how it is acquired, and how and for what purposes it is exercised.² In England this particular jurisdiction is one

¹ The general jurisdiction of equity over all guardians as fiduciary persons, for the purpose of compelling them to account, has already been stated: *Ante*, § 1097.

² Throughout the United States the modes of appointing guardians, and their rights, powers, and duties, are generally regulated, and in many

states very minutely regulated, by statutes. A special, and often complete, statutory jurisdiction over them is given to the probate courts, under whatever name, as a part of the general statutory system for the administration and settlement of decedents' estates. In this manner, the original jurisdiction of equity, like that over

of the most important branches of the equity jurisprudence, and hardly any other is more frequently exercised by the courts of chancery. In this country, by reason of statutory legislation, it is relatively of much less importance.¹

§ 1304. **Origin of This Equitable Jurisdiction.** — It is also wholly unnecessary to enter upon any discussion of the mooted questions as to the origin of the jurisdiction. It may, in its very inception, have belonged to the king as a part of his executive power as *parens patriæ* to protect his subjects, and may by him have been transferred to the court of chancery. It is, however, firmly established as a judicial function of the court; it does not belong to the chancellor alone as the personal delegate and representative of the crown; it is exercised by all the judges composing the court of chancery, in the same manner, and governed by the same regulations, as all other confessedly judicial functions.² The same inherent jurisdiction is possessed, although not exercised so freely and minutely, by the American courts, unless curtailed or taken away by statute, — a fact very difficult of explana-

administrations, has been to a great extent superseded, and in some states probably abrogated, by the special statutory system. On the other hand, as to all matters not included within the statutes, and in many states concurrently with this statutory system, the original equity jurisdiction over infants, like that over administrations, still remains in full force, to be exercised whenever occasion calls for its being set in motion. The very recent American decisions illustrating this original jurisdiction are undoubtedly few; but they are sufficient to show that it has not been generally abrogated nor become entirely obsolete.

¹ For a full and detailed discussion of the jurisdiction in all its phases, see the English and American notes to *Eyre v. Countess of Shaftsbury*, 2 Lead. Cas. Eq., 4th Am. ed., 1416, 1446, 1487.

² Although the theory that the jurisdiction had its origin in the king's

power as *parens patriæ* has been accepted by many of the English judges, and has been constantly repeated by text-writers, English and American, there seem to be almost insuperable difficulties involved in it, and it has been rejected by some of the ablest English jurists. In this country, according to our system of government, the power of *parens patriæ* belongs exclusively to the legislature of each state, and is not possessed by the courts. With regard to the nature and origin of the jurisdiction, see *Eyre v. Countess of Shaftsbury*, 2 P. Wms. 103; 2 Lead. Cas. Eq., 4th Am. ed., 1416, 1446, 1487; *Cary v. Bertie*, 2 Vern. 333, 342; *Morgan v. Dillon*, 9 Mod. 135, 139; *Butler v. Freeman*, Amb. 301; *De Manneville v. De Manneville*, 10 Ves. 52, 63; *Ex parte Phillips*, 19 Ves. 118, 122; *Wellesley v. Duke of Beaufort*, 2 Russ. 1, 20, 21; *Wellesley v. Wellesley*, 2 Bligh, N. S., 124, 129, 136, 142.

tion, on the assumption that the jurisdiction is a part of the executive functions of the crown.¹

§ 1305. **How Acquired.** — In order that the jurisdiction may be acquired in any particular case, the infant must be made a "ward of the court." He thus becomes a ward of the court whenever he is brought before the court for any purpose, as a party plaintiff or defendant to a suit, petition, order, application, or any other proceeding.² It has sometimes been said that the infant must have property, in order that he may be a ward of the court and the jurisdiction may attach to him. This is inaccurate. Property is not essential to the *existence* of the jurisdiction; it is, at most, a requisite to the *exercise* of the jurisdiction, since without it the powers of the court could not be fully enforced.³ Although the existence of property belonging to the infant must therefore be generally alleged, it is a clear deduction from the cases that the allegation is mainly formal; the amount of property is certainly immaterial; and it seems that the allegation cannot be questioned,

¹ *Williamson v. Berry*, 8 How. 495; *In the Matter of Hubbard*, 82 N. Y. 90, 92; *Wilcox v. Wilcox*, 14 N. Y. 575; *Aymar v. Roff*, 3 Johns. Ch. 49; *Matter of Andrews*, 1 Johns. Ch. 99; *Ex parte Crumb*, 2 Johns. Ch. 439; *Matter of Wollstonecraft*, 4 Johns. Ch. 80; *Wood v. Wood*, 5 Paige, 596, 605; 28 Am. Dec. 451; *People v. Wilcox*, 22 Barb. 178; *Matter of Clifton*, 47 How. Pr. 172; *State v. Stigall*, 22 N. J. L. 286, 289; *State v. Baird*, 18 N. J. Eq. 194; 21 N. J. Eq. 384, 387; *In re Harrall*, 31 N. J. Eq. 101; *Downin v. Sprecher*, 35 Md. 474; *Armstrong v. Stone*, 9 Gratt. 102, 106; *Hutson v. Townsend*, 6 Rich. Eq. 249; *Striplin v. Ware*, 36 Ala. 87; *Goodman v. Winter*, 64 Ala. 410; 38 Am. Rep. 13; *Johns v. Smith*, 56 Miss. 727; *Cowls v. Cowls*, 3 Gilm. 435; 44 Am. Dec. 708; *Miner v. Miner*, 11 Ill. 43; *Lynch v. Rotan*, 39 Ill. 14; *McCord v. Ochiltree*, 8 Blackf. 15; *Garner v. Gordon*, 41 Ind. 92; *Maguire v. Maguire*, 7 Dana, 181; *Gardenhire v. Hinds*, 1 Head, 402. [See also *Sutton v. Schonwald*, 86 N. C. 198; 41 Am. Rep. 455; *Lake v.*

McDavitt, 13 Lea, 26; *Lloyd v. Kirkwood*, 112 Ill. 329.]

² *Butler v. Freeman*, Amb. 301; *Williamson v. Berry*, 8 How. 495, 531. A suit is not necessary; any proceeding or application relating directly to the infant is sufficient: *In re Graham*, L. R. 10 Eq. 530; *In re Hodge's Settlement*, 3 Kay & J. 213. The infant must be a ward of the court: *In re Potter*, L. R. 7 Eq. 484.

³ This view is laid down by Lord Eldon with more than his usual directness, in *Wellesley v. Duke of Beaufort*, 2 Russ. 1, 21: "It is not, however, from any want of jurisdiction that it [the court] does not act where it has no property of an infant, but from want of the means to *exercise* its jurisdiction, because the court cannot take on itself the maintenance of all the children in the kingdom. It can exercise this jurisdiction usefully and practically only where it has the means of doing so, — that is to say, by its having the means of applying property for the use and maintenance of the infants."

nor the fact of property as alleged denied, for the purpose of defeating the jurisdiction.¹

§ 1306. **Its Extent—Appointment of Guardians.**—The jurisdiction having thus attached, we may next inquire as to its extent, or what acts may be done in virtue of it. In the first place, it is a firmly settled doctrine that the court of equity can and will appoint a guardian of the person and estate of the infant, when there is no other guardian, or none who will or can act.² This is ordinarily the first step which is taken, and the further control of the infant's person or property is usually exerted upon and through this guardian. The power can of necessity only be exercised in respect of persons or property within the territorial jurisdiction of the court,—that is, within the state or country,—but the jurisdiction does not depend upon the legal *domicile* of the infant. It is sufficient to authorize the appointment of a guardian if the infant is *an actual resident* within the territorial jurisdiction of the court,—that is, within the state, although his property is wholly within another state or country, and even though his legal domicile is elsewhere.³ On the other hand, where the infant is both domiciled and actually resident out of the state, but has property within the state, the courts of that state have power to appoint a guardian over the property, and for the maintenance of

¹ That the allegation is formal results from the fact that the jurisdiction will be exercised although the property is in another country, wholly beyond the reach of the courts. Some of the American cases seem to have gone to the length of sustaining and exercising the jurisdiction where it affirmatively appeared that the infant had no property: *Johnstone v. Beattie*, 10 Clark & F. 42; *Cowls v. Cowls*, 3 Gilm. 435; 44 Am. Dec. 708; *Maguire v. Maguire*, 7 Dana, 181.

² This power to appoint guardians exists in the American states, so far as it has not been taken away or restricted by statute: *Wellesley v. Duke of Beaufort*, 2 Russ. 1; *Wellesley v.*

Wellesley, 2 Bligh, N. S., 124; *In re Kaye*, L. R. 1 Ch. 387; *Wilcox v. Wilcox*, 14 N. Y. 575; *In the Matter of Hubbard*, 82 N. Y. 90, 92; *Wood v. Wood*, 5 Paige, 596; 28 Am. Dec. 451; *In the Matter of Wollstonecraft*, 4 Johns. Ch. 80; *Miner v. Miner*, 11 Ill. 43; *Maguire v. Maguire*, 7 Dana, 181. [See also *Lake v. McDavitt*, 13 Lea, 26.]

³ *Johnstone v. Beattie*, 10 Clark & F. 42; an infant was domiciled in Scotland, and all her property was situated there, she having none in England; but she was at the time a resident of England, and it was held that the court of chancery had jurisdiction to appoint her guardian. And see *Nugent v. Vetzera*, L. R. 2 Eq. 704.

the infant.¹ If, however, the infant is neither domiciled nor actually resident in the state, and has no property within its territory, the courts of that state have no power to appoint a guardian; there is manifestly no foundation for the exercise of the jurisdiction.² Finally, where an infant domiciled and resident out of the state has been clandestinely and surreptitiously brought within the state for the purpose of giving jurisdiction, the court refuses to exercise its jurisdiction and to appoint a guardian for such infant.³

§ 1307. **The Same. Custody of Infants.** — In addition to its power to appoint guardians, the court of equity will also exercise its jurisdiction, in a proper case, and to promote the highest welfare of the infant, where there is already a guardian, natural or legal, by controlling the *person* of the infant, and by removing it personally from the custody of its natural or legal guardian, even from the custody of its own parents. By the common law, as well as by the law of nature, the father is the natural guardian of his infant children. It is not only the father's right, but his imperative *duty*, to have custody of the persons of his infant children, and to educate and train them so as to promote their future well-being as members of society. The equitable jurisdiction over the persons of infants is based upon this parental duty, and is an indirect means of enforcing it by furnishing a remedy for its violation. The jurisdiction is a delicate one; it rests in the highest degree upon the enlightened discretion of the court, and will only be exercised when plainly demanded as the means of securing the infant's present and

¹ Logan v. Fairlee, Jacob, 193; Stephens v. James, 1 Mylne & K. 627; Salles v. Savignon, 6 Ves. 572; Hope v. Hope, 4 De Gex, M. & G. 328 (over infants resident abroad).

² In the Matter of Hubbard, 82 N. Y. 90, 93.

³ In the Matter of Hubbard, 82 N. Y. 90, 95; and see Smith v. Meyers, 1 Thomp. & C. 665; Carpenter v. Spoon-

er, 2 Sand. 717; In the Matter of La-grave, 45 How. Pr. 301, 305; *a fortiori* this is so, where the infant is brought into the state by force. As to the court allowing or compelling the removal of an infant out of its jurisdiction, see Dawson v. Jay, 3 De Gex, M. & G. 764; [also Elliott v. Lambert, 23 Ch. Div. 186.]

future well-being. It is well settled, therefore, that a court of equity may interfere on behalf of infants, and remove them from the custody and control of their father or mother, whenever the habits, practices, instruction, or example of the parent, exerting a personal influence on the infants, tend to corrupt their morals and undermine their principles; or when the parent is neglecting their education suitable for their condition in life; or is endangering their property; or is guilty of ill-treatment or cruelty towards them.¹ The court will, of course, under

¹ I shall not enter upon any discussion of the particular circumstances which do or do not warrant the court in thus interfering; much less examine the respective rights of the father and the mother to the custody of their children. In this country the tendency of the decisions, and especially of the modern statutes, is to place the mother's rights upon an equality with those of the father. My only purpose is to cite authorities establishing the jurisdiction; but these very cases will disclose the circumstances which call for its exercise. There is one fundamental rule, viz., that the exercise of the jurisdiction depends upon the sound and enlightened discretion of the court, and has for its sole object the highest well-being of the infant; it should never, therefore, be influenced by any *sentimental* considerations in behalf of either the mother or the father: *Wellesley v. Duke of Beaufort*, 2 Russ. 1; *sub nom. Wellesley v. Wellesley*, 2 Bligh, N. S., 124 (the facts of this case are simply astounding); *Shelley v. Westbrook*, Jacob, 266, note; *De Manneville v. De Manneville*, 10 Ves. 52, 62; *Whitfield v. Hales*, 12 Ves. 492; *Crenze v. Hunter*, 2 Cox, 242; *Kiffin v. Kiffin*, cited 1 P. Wms. 705; *Warde v. Warde*, 2 Phill. Ch. 786; *Anonymous*, 2 Sim., N. S., 54; *Thomas v. Roberts*, 3 De Gex & S. 758; *In re Besant*, L. R. 11 Ch. Div. 508 (children removed from mother's custody); *Hope v. Hope*, 4 De Gex, M. & G. 328; *Swift v. Swift*, 4 De Gex, J. & S. 710; *Matters of Waldron*, 13 Johns. 418; *People v. Mercein*, 8 Paige, 47; 25 Wend. 64; [see also *Agar-Ellis v. Lascelles*, 24 Ch. Div.

317; *In re Elderton*, 25 Ch. Div. 220; *Richards v. Collins*, 45 N. J. Eq. 283; 14 Am. St. Rep. 726; *Heinemann's Appeal*, 96 Pa. St. 112; 42 Am. Rep. 532; *Washaw v. Gimble*, 50 Ark. 355; *Sturtevant v. State*, 15 Neb. 459; 48 Am. Rep. 349.]

Mere insolvency of the father is not sufficient ground for interference; there must be further circumstances hazarding the infant's property: *In re Fynn*, 2 De Gex & S. 457; see *Kiffin v. Kiffin*, cited 1 P. Wms. 705.

Also, the mere fact that the *father's* conduct is even grossly immoral, even though he is living in adultery, but where his children are not brought into contact with it, and are not subjected to the injurious influence of its example, is not a sufficient ground for removing them from his custody. This jurisdiction is not designed merely as a punishment for the immoral practices of the father, but *solely* as a protection for the well-being of infants: *Ball v. Ball*, 2 Sim. 35; and see *State v. Baird*, 21 N. J. Eq. 384; *Commonwealth v. Addicks*, 5 Binn. 520; 2 Serg. & R. 174.

Whatever may be true of fathers, this particular rule certainly should not be applied to a mother guilty of such immorality; for the supposition that her infant children could not be contaminated would simply be impossible and absurd. I doubt whether any American court, at the present day, would remove infants from the custody of their father because his opinions and teachings were irreligious, skeptical, or even atheistical, unless they were also positively immoral.

like circumstances, remove infants from the custody of a legal or appointed guardian. When infants are thus removed from the control of their parent or their legal guardian, the court does not generally appoint another regular guardian; it places them in the custody of a suitable person *as an acting guardian*.¹

§ 1308. **How Exercised — Supervision of the Guardian.** — An infant having been made a ward of the court, and a guardian being appointed, the further jurisdiction concerning the ward is ordinarily exercised by supervising, directing, and controlling the acts of the guardian in the management of his trust. The supervision and control may be summed up as directed chiefly to three distinct matters: 1. The intellectual, moral, and religious training of the ward; 2. The protection and management of his property, including his maintenance; 3. His marriage. *Education of the ward:* While the court will undoubtedly require the infant to be suitably educated according to his prospects and condition, the manner and course of the education and all its details are left to the judgment and discretion of the guardian, and the ward will be compelled to comply with his guardian's decision.² The English courts exercise some supervision over the religious training of the ward, acting upon the *general* rule that the ward should be brought up in the religious beliefs, opinions, and practices of his father. This general rule is subject to modification, however, under the particular circumstances of individual cases.³

¹ Ex parte Mountfort, 15 Ves. 445.

² Hall v. Hall, 3 Atk. 721; Tremain's Case, 1 Strange, 168; Hope v. Hope, 4 De Gex, M. & G. 328.

³ Under what circumstances the religious beliefs of the father may be departed from appears from some of the cases here cited. It is well settled, however, that a guardian is not necessarily bound to bring up his ward in the tenets of the established church of England; See Talbot v. Earl of Shrewsbury, 4 Mylne & C. 672; Austin

v. Austin, 34 Beav. 257; 4 De Gex, J. & S. 716; Stourton v. Stourton, 8 De Gex, M. & G. 760; In re Newbery, L. R. 1 Ch. 263; 1 Eq. 431; Hawksworth v. Hawksworth, L. R. 6 Ch. 539, 543, 544; Andrews v. Salt, L. R. 8 Ch. 622; In re Agar-Ellis, L. R. 10 Ch. Div. 49; In re Besant, L. R. 11 Ch. Div. 508. [See also In re Clarke, 21 Ch. Div. 817; Agar-Ellis v. Lascelles, 24 Ch. Div. 317; Montagu v. Festing, 28 Ch. Div. 82; In re Scanlan, 40 Ch. Div. 200; In re Violet Nevin, (1891) 2 Ch. 299.]

§ 1309. **The Same. Management of Property.** — The court will exercise a constant supervision over the guardian in the management of the ward's property. The guardian not only may, but must, use a sound discretion in applying a reasonable amount of the income, or even, if necessary, of the principal, of the personal estate for the maintenance and education of the infant in a manner suitable to his prospects and condition.¹ Independently of statute, the control of the guardian extends only to the personal estate, and the rents and profits of the real estate, and not to the *corpus* of the land. He is not, in general, permitted to change the nature of the property, as by turning personal into real estate; although this may be allowed by the court, when, under the circumstances, it appears to be for the benefit of the infant ward.²

¹ The amount allowed for maintenance will depend upon the circumstances of each case: See *Pierpoint v. Lord Cheney*, 1 P. Wms. 488; *Bradshaw v. Bradshaw*, 1 Jacob & W. 647; *Heysham v. Heysham*, 1 Cox, 179; *Brown v. Smith*, L. R. 10 Ch. Div. 377; *In the Matter of Bostwick*, 4 Johns. Ch. 100. [See also *Stephens v. Howard*, 32 N. J. Eq. 244; *Jenkins v. Whyte*, 62 Md. 427; *Pierce v. Pierce*, 64 Wis. 73; 54 Am. Rep. 581. As to allowance for past maintenance, see *Hyland v. Baxter*, 98 N. Y. 610; *In re Besondy*, 32 Minn. 385; 50 Am. Rep. 579.]

A father is, in general, bound to maintain his infant children. Where the infants have property of their own, an allowance out of it for their maintenance will not, therefore, be ordinarily allowed, even though there is a provision for their maintenance in the will or deed conferring the property; the father, if able, must maintain them out of his own estate: *Stocken v. Stocken*, 4 Mylne & C. 95, 98; *Meacher v. Young*, 2 Mylne & K. 490; *Ransome v. Burgess*, L. R. 3 Eq. 773.

There is an exception to this general rule; where the father's means are so small that he is unable to defray the cost of an education suitable to their prospects, an allowance for their maintenance will be made to him out

of their estate: *Buckworth v. Buckworth*, 1 Cox, 80; *Wright v. Vanderplank*, 8 De Gex, M. & G. 133; *Havelock v. Havelock*, L. R. 17 Ch. Div. 807. Also, where the property is not given to the infants simply with a direction for their maintenance, but is conveyed upon an express trust for their maintenance, then it must be so applied, irrespective of their father's ability to support and educate them: *Thompson v. Griffin*, *Craig & P.* 317, 320; *In re Dalton*, 1 De Gex, M. & G. 265; *Ransome v. Burgess*, L. R. 3 Eq. 773; *In re Hodges*, L. R. 7 Ch. Div. 754; *In re Roper's Trusts*, L. R. 11 Ch. Div. 272.

² See *Ex parte Grimstone*, 4 Brown Ch. 235, note; *Amb.* 708; *Vernon v. Vernon*, cited 1 Ves. 456; *Ex parte Phillips*, 19 Ves. 118, 122; *Frith v. Cameron*, L. R. 12 Eq. 169; *De Witte v. Palin*, L. R. 14 Eq. 251; *Marquis of Camden v. Murray*, L. R. 16 Ch. Div. 161. The reason why such change of property is not permitted is, that the rights of the ward's successors — heirs or next of kin — would thereby be entirely altered if the infant should die under age. In order to preserve these rights, when a conversion was allowed, the court required a declaration that the resulting property should continue to be of its original nature; e. g., if money was invested in land, that it should continue to be personal prop-

It seems to be a doctrine sustained by a preponderance of authority, that a court of equity has no power, as a part of its jurisdiction over infants, to order a sale of the infant's real estate for purpose of maintenance education, or investment.¹ The powers and duties of guardians in their management of the property of infant wards, and the powers of courts to direct a sale of their lands, are so much regulated by statutes in the various states, that these general rules of the purely equitable jurisdiction can have little practical application throughout the United States.

§ 1310. **Marriage.** — The English courts of equity exercise a very strict and stern control over the marriage of their infant wards. This special phase of the jurisdiction is based upon the notion that a suitable settlement should always accompany a marriage; and especially that the property of the wife, when she is the ward, should be settled to her sole and separate use. The marriage of an infant ward, even where the parents are living, must receive the approval and sanction of the court. An apprehended marriage, of which the court does not approve, will be restrained by injunction. A marriage of an infant ward without obtaining the consent of the court is a gross contempt, and will be punished as such, although the marriage itself cannot be avoided. If an infant female ward is thus married, the husband and all who aided in procuring it may be punished by fine and imprisonment; and the husband will be compelled to execute a settlement on his wife, to be approved by the court, ever

erty: See *Ware v. Polhill*, 11 Ves. 257, 278; *Ex parte Phillips*, 19 Ves. 118, 122; *Lord Ashburton v. Lady Ashburton*, 6 Ves. 6; *Steed v. Preece*, L. R. 18 Eq. 192; *Kelland v. Fulford*, L. R. 6 Ch. Div. 491.

¹ *Williamson v. Berry*, 8 How. 495, 531; *Rogers v. Dill*, 6 Hill, 415; *Faulkner v. Davis*, 18 Gratt. 651; 98 Am. Dec. 698; *Kearney v. Vaughan*, 50 Mo. 254; *per contra*, *Goodman v. Winter*, 64 Ala. 410; 38 Am. Rep. 13

(a court of chancery has inherent power to order a sale of infants' real estate); and see *Sharp v. Findley*, 59 Ga. 722; *Bulow v. Witte*, 3 S. C. 308; *Huger v. Huger*, 3 Desaus. Eq. 18. [See also *Messner v. Giddings*, 65 Tex. 301; *Walker v. Smysers*, 80 Ky. 620; but see *Thorington v. Thorington*, 82 Ala. 489 (power asserted). That it may direct the estate to be mortgaged to procure money for necessary repairs, see *Jackson v. Talbot*, 21 Ch. Div. 386.]

though the wife should expressly waive her right to such settlement.¹ This control over the marriage of wards, if it ever existed in theory, has become practically obsolete in the American states; it is not in harmony with our social habits, customs, and modes of thought.

SECTION II.

PERSONS OF UNSOUND MIND.

ANALYSIS.

- § 1311. Origin of this jurisdiction.
- § 1312. Mode of exercising the jurisdiction in England.
- § 1313. Jurisdiction in the United States.
- § 1314. Jurisdiction in cases of weak or unsound mind.

§ 1311. **Origin of This Jurisdiction.** — Whatever be the correct theory with respect to the jurisdiction over infants, it is absolutely certain that the corresponding jurisdiction over the person and property of lunatics and idiots, and all others who may be adjudicated *non compos mentis*, was derived by delegation from the crown; it was a portion of the king's executive power as *parens patriæ*, and did not belong to the court of chancery by virtue of its inherent and general judicial functions. This branch of the regal authority was delegated to the chancellor as the personal representative of the crown, by means of an official instrument called the Sign Manual, signed by the king's own signature, and sealed with

¹ Although this subject is of great practical importance in England, and the decisions are numerous, I have not deemed it necessary to enter upon any detailed discussion or classification of the cases; for there is no evidence that any such jurisdiction is exercised at the present day by the American courts: See *Smith v. Smith*, 3 Atk. 304; *Ex parte Mitchell*, 2 Atk. 173; *More v. More*, 2 Atk. 157; *Herbert's Case*, 3 P. Wms. 115; *Eyre v. Countess of Shaftsbury*, 2 P. Wms. 103; 2 Lead. Cas. Eq. 1416; *Lord Ray-*

mond's Case, Cas. t. Talb. 58; *Tombes v. Elers*, 1 Dick. 88; *Pearce v. Crutchfield*, 14 Ves. 206; *Leeds v. Barnardiston*, 4 Sim. 538; *Ball v. Coutts*, 1 Ves. & B. 292, 303; *Wortham v. Pemberton*, 1 De Gex & S. 644; *Field v. Moore*, 7 De Gex, M. & G. 691; *Martin v. Foster*, 7 De Gex, M. & G. 98; *Att'y-Gen. v. Read*, L. R. 12 Eq. 38; *White v. Herrick*, L. R. 4 Ch. 345; *Shipway v. Ball*, L. R. 16 Ch. Div. 376. [See also *Buckmaster v. Buckmaster*, 33 Ch. Div. 482.]

his own privy seal, and was exercised by the chancellor alone, and not by the court of chancery.¹ After this special jurisdiction had thus been exercised in any particular case, by adjudicating an individual to be a lunatic, and by appointing a committee of his person and property, a further jurisdiction then arose in the *court of chancery* to supervise and control the official conduct of the committee; but this supplementary jurisdiction of the *court* seems to have been a part of its general authority over trusts, trustees, and fiduciary persons.² The jurisdiction in matters of lunacy and all the proceedings thereon in England are now regulated by statute.³

§ 1312. **Mode of Exercising Jurisdiction in England.**—The proceedings in which this jurisdiction is exercised are substantially as follows: Some friend of the alleged lunatic addresses a petition to the chancellor personally, or other judge in lunacy; a special commission is thereupon issued, directing a judicial inquisition of the alleged lunacy, which inquisition is made by means of a jury,—a regular trial of the issues before a jury; their finding or verdict, so long as it stands unimpeached, and the inquisition is not superseded, is conclusive as to the *status* of the party. Upon the return of the commission and inquisition, if the party is found to be a lunatic, the chancellor or judge in lunacy appoints a committee in the nature of

¹ Ex parte Grimstone, Amb. 706; 4 Brown Ch. 235, note; Eyre v. Countess of Shaftsbury, 2 P. Wms. 103, 118, 119; Dormer's Case, 2 P. Wms. 265; Cary v. Bertie, 2 Vern. 333, 342, 343; Wigg v. Tiler, 2 Dick. 552; Ex parte Degge, 4 Brown Ch. 235, note; Oxenden v. Lord Compton, 2 Ves. 69, 71; Ex parte Chumley, 1 Ves. 296; Ex parte Baker, 6 Ves. 8; Ex parte Phillips, 19 Ves. 118, 122; Ex parte Pickard, 3 Ves. & B. 127; Lysaght v. Royse, 2 Schoales & L. 151, 153; In re Fitzgerald, 2 Schoales & L. 432; In the Matter of Webb, 2 Phill. Ch. 10; Gillbee v. Gillbee v. 1 Phill. Ch. 121; In the Matter of Barker, 2 Johns. Ch. 232, 234.

² Ibid.; In re Fitzgerald, 2 Schoales & L. 432, 438; Nelson v. Duncombe, 9 Beav. 211; In re Blewitt, 6 De Gex M. & G. 187. As to maintenance, see In re Sanderson's Trust, 3 Kay & J. 497; In re Baker's Trusts, L. R. 13 Eq. 168; In re Gibson, L. R. 7 Ch. 52; In re Wynne, L. R. 7 Ch. 229; In re Evans, L. R. 21 Ch. Div. 297; Ex parte Whitbread, 2 Mer. 99, 102; In re Blair, 1 Mylne & C. 300, 302; In re Frost, L. R. 5 Ch. 699; In re Weaver, L. R. 21 Ch. Div. 615; In re Leeming, 3 De Gex, F. & J. 43; In re Wharton, 5 De Gex, M. & G. 33.

³ See 16 & 17 Vict., c. 70; 18 & 19 Vict., c. 13; 25 & 26 Vict., c. 86.

a guardian over the person and property of the lunatic. This committee, in his character as trustee, is, of course, under the supervision and control of the court of chancery. The scope of these proceedings has been enlarged by modern statutes, so that it embraces persons who are not strictly lunatics or idiots, but who are *non compotes mentis*, and therefore incapable of managing their property.¹

§ 1313. **Jurisdiction in the United States.**—It necessarily follows from its origin that this special jurisdiction over the persons and property of lunatics is not generally possessed by the courts of equity in the United States as a part of the original inherent equitable jurisdiction.² There are a few apparent exceptions, but these exceptions in reality only confirm the truth of my statement. In a very few states the constitutions or statutes, in their general grants of jurisdiction to courts of equity, confer jurisdiction over lunatics, idiots, and persons *non compotes mentis*.³ The powers of the American courts are conferred and regulated by statutes.⁴ While there is much variety of detail in this legislation, the proceedings authorized by it, in all their substantial features, resemble those of the English court, as described in the last preceding paragraph. They extend not only to lunatics and idiots, but to confirmed drunkards, and other persons who are so *non compotes mentis* that they are incapable of managing their own affairs.⁵ When the special statutory jurisdiction has been

¹ See *Sherwood v. Sanderson*, 19 Ves. 280, 285; *Ex parte Cranmer*, 12 Ves. 445; *Gibson v. Jeyes*, 6 Ves. 266, 273; *Ridgeway v. Darwin*, 8 Ves. 65; *In re Webb*, 2 Phill. Ch. 10; *Lysaght v. Royse*, 2 Schoales & L. 151, 153; *In re Fitzgerald*, 2 Schoales & L. 432, 438; *In re Monaghan*, 3 Jones & L. 258.

² See *Dowell v. Jacks*, 5 Jones Eq. 417.

³ In these states, therefore, the jurisdiction is wholly statutory, and is not included in the general powers belonging to the courts *as courts of equity*,—powers inherited from the English court of chancery. Among these states

are Pennsylvania, Tennessee, Mississippi: See *ante*, vol. 1 §§ 284–286, in notes.

⁴ In some states the power is not given exclusively to courts of equitable jurisdiction.

⁵ Ample opportunities are provided for reviewing the finding, and for setting aside or superseding the inquiry. In some states the court seems to have power to direct a new inquiry in a summary manner. As illustrations, see *Matter of Barker*, 2 Johns. Ch. 232, 234; *In re Lasher*, 2 Barb. Ch. 97; *In re Dickie*, 7 Abb. N. C. 417; *Hirsch v. Trainer*, 3 Abb. N. C. 274; *In re McAdams*, 19 Hun, 292;

exercised, a person has been adjudged or "found" a lunatic or otherwise *non compos mentis*, and a committee or guardian has been appointed, the general jurisdiction of equity extends over such committee or guardian, for the purpose of calling him to an account of his trust, in the same manner as over all other strictly fiduciary persons.¹

§ 1314. **Jurisdiction in Cases of Weak or Unsound Mind.** — The special jurisdiction above described is confined to persons who may be and are adjudicated or found to be lunatics, idiots, or *non compotes mentis*. The very first step, in order that the court may, through a committee, control the person and property of the particular individual is a proceeding by which he is judicially determined to belong to the *status* of lunatics or *non compos mentis*. In addition to this peculiar authority, a court of equity may, in appropriate cases, in pursuance of its inherent general powers, protect the property of persons of weak or unsound mind, who have not been and who even cannot be judicially "found" *non compotes mentis*.² These

In re Zimmer, 15 Hun, 214; In re Page, 7 Daly, 155; Matter of Colah, 6 Daly, 308; In re Collins, 18 N. J. Eq. 253; In re Hill, 31 N. J. Eq. 203; In re Fitzgerald, 30 N. J. Eq. 59; In re Conover, 28 N. J. Eq. 330; In re Lawrence, 28 N. J. Eq. 331; Dean's Appeal, 90 Pa. St. 106; Rogers v. Walker, 6 Pa. St. 371; 47 Am. Dec. 470; Dowell v. Jacks, 5 Jones Eq. 417; Walker v. Russell, 10 S. C. 82; Morton v. Sims, 64 Ga. 298; Gray v. Obear, 59 Ga. 675; Watson's Interdiction, 31 La. Ann. 757; Francke v. His Wife, 29 La. Ann. 302; Ex parte Dozier, 4 Baxt. 81; Cuneo v. Bessoni, 63 Ind. 524; Meharry v. Meharry, 59 Ind. 257. [See also Hughes v. Jones, 116 N. Y. 75; Ashley v. Holman, 15 S. C. 97; Whetstone v. Whetstone's Ex'rs, 75 Ala. 495; Robinson v. Burritt, 66 Miss. 356.]

¹ See *ante*, § 1097, and cases cited in note; In re Harrall, 31 N. J. Eq. 101.

² In Beall v. Smith, L. R. 9 Ch. 85, 91, James, L. J., said: "The law of the court of chancery undoubtedly is, that in certain cases where there is a person of unsound mind, not found so by

inquisition, and therefore incapable of invoking the protection of the court, that protection may in proper cases, and if and so far as may be necessary and proper, be invoked on his behalf by any person as his next friend. . . . It is to be borne in mind that unsoundness of mind gives the court of chancery no jurisdiction whatever. It is not like infancy in that respect. The court of chancery is by law the guardian of infants, whom it makes its wards. The court of chancery is not the curator either of the person or of the estate of a person *non compos mentis*, whom it does not and cannot make its ward. It is not by reason of the incompetency, but notwithstanding the incompetency, that the court of chancery entertains the proceedings. It can no more take upon itself the management or disposition of a lunatic's property than it can the management or disposition of the property of a person abroad, or confined to his bed by illness. The court can only exercise such equitable jurisdiction as it could under the same circumstances have exercised at the suit of the per-

two jurisdictions are wholly distinct. The former is special; the latter is the general jurisdiction of equity exercised, "not by reason of the incompetency, but notwithstanding the incompetency." The court can only exercise such equitable jurisdiction as it could under the same circumstances have exercised at the suit of the person himself, if he were of sound mind.

son himself if of sound mind." The judge then gives examples of such jurisdiction, viz.: where there is trust property, and the person of unsound mind is interested, or in the case of a partnership in which one partner becomes unsound of mind, or where the incompetent person, by his next friend, seeks to set aside instruments or gifts fraudulently obtained from him. In all these cases the court acts by virtue of its ordinary jurisdiction over trusts, partnership, or fraud. He then adds: "But I know of no authority and no principle for the court of chancery taking into its care the estates or other property of which such a person is the legal owner." In this case the lord justice was looking at the matter negatively, and mainly considering the *limitations* on the jurisdiction. In *Jones v. Lloyd*, L. R. 18 Eq. 265, 274, 275, Jessel, M. R., looked at the affirmative, and considered the existence of the jurisdiction. The plaintiff, who sued by a next friend, was lunatic, but had not been so found by inquisition, and he sought to dissolve a partnership of which he was a member, on the ground of his mental condition. The jurisdiction to entertain the suit before the plaintiff had been "found" a lunatic was strenuously denied. On this question the master of rolls said: "Can a suit be instituted by the lunatic, not found so by inquisition, by his next friend? I have no doubt it can. There is authority upon the subject, and it seems to me so distinct that I have no occasion really to refer to the reason; but independently of authority, let us look at the reason of the thing. If this were not the law, anybody might at his will and pleasure commit waste on a lunatic's property or do damage or

serious injury and annoyance to him or his property, without there being any remedy whatever. In the first place, the lords justices or the lord chancellor are not always sitting for applications in lunacy. In the next place, if they were, everybody knows it takes a considerable time to make a man a lunatic by inquisition, and his family sometimes hesitate about making him a lunatic, or hope for his recovery, and take care of him in the mean time without applying for a commission in lunacy. Is it to be tolerated that any person can injure him or his property without there being any power in any court of justice to restrain such injury? Is it to be said that a man may cut down trees on the property of a person in this unfortunate state, and that because no effort of his can be made, no member of his family can file a bill in his name as a next friend, to prevent that injury? Is it to be allowed that a man may make away with the share of a lunatic in a partnership business, or take away the trust property in which he is interested, without this court being able to extend its protection to him by granting an injunction at the suit of the lunatic by a next friend, because he is not found so by inquisition? I take it, those propositions, when stated, really furnish a complete answer to the suggestion that he cannot maintain such a suit. Of course, they do not answer the question as to how far he may carry it; but that he can maintain such a suit for the purpose of protection, for the purpose of obtaining, as in this case, a receiver, I should think there can be no doubt whatever." The case of *Light v. Light*, 25 Beav. 248, is also directly in point sustaining such jurisdiction.

PART FOURTH.

PART FOURTH.

THE REMEDIES AND REMEDIAL RIGHTS WHICH ARE CONFERRED BY THE EQUITY JURISPRU- DENCE.

PRELIMINARY SECTION.

ANALYSIS.

§ 1315. General object.

§ 1316. Classification.

§ 1317. Remedies acting *in rem* or *in personam*.

§ 1318. Remedies *in personam* beyond the territorial jurisdiction.

§ 1315. **General Object.** — The general nature, kinds, and classes of equitable remedies, both those belonging to the exclusive and to the concurrent jurisdictions, have been fully described in a former volume.¹ The main purpose of the discussions in this Part Fourth is to determine under what circumstances, for the protection of what primary rights and interests, legal or equitable, on the occasion of what wrongs or violations of duty, and between what parties, equity *will exercise its jurisdiction* by granting either those remedies which are peculiar to courts of equity, or those which are essentially legal in their nature and are administered concurrently by courts of law and of equity. In other words, my object is to show *what* remedies may be conferred by equity, and *when* its jurisdiction will be exercised by granting them. The entire discussion is based upon the general principles and doctrines which define the equitable jurisdiction and determine its exercise, as explained in a previous volume.²

¹ See *ante*, vol. 1, §§ 112-116; *Ibid.*, §§ 134, 135; and *Ibid.*, §§ 170-172.

² See vol. 1, pt. 1, c. 1, 2.

§ 1316. **Classification.** — The classification presented in the former volume, and referred to in the preceding paragraph, was intended merely for purposes of general description, and in order to present the active remedial system in one body. For the discussions of this Part Fourth I shall adopt the following classification, by which all equitable remedies are collected and arranged in eight separate groups: 1. The First Group contains those remedies which are purely ancillary and provisional, which do not affect any primary right nor confer any ultimate relief.¹ 2. The Second Group consists of remedies purely preventive.² 3. The Third Group consists of remedies which *indirectly* establish or protect interests and primary rights, whether those interests and rights are legal or equitable.³ 4. The Fourth Group consists of remedies by which estates, interests, and primary rights, either legal or equitable, are *directly* declared, established, or recovered, or the enjoyment thereof is fully restored.⁴ 5. The Fifth Group consists of remedies by which *equitable obligations* are specifically and directly enforced.⁵ 6. The Sixth Group consists of remedies in which the final relief is *pecuniary*, but is obtained by the enforcement of a *lien* or *charge* upon some specific property or fund.⁶ 7. The Seventh

¹ These are interpleader and receivers.

² It includes injunctions for all possible purposes; and in this connection I treat of equitable defenses in legal actions as a substitute for injunctions to restrain actions at law.

³ They are reformation and re-execution, and cancellation, surrender up or discharge of instruments.

⁴ This entire group contains three main classes: 1. Suits by which purely *legal* estates are established, and the enjoyment thereof is recovered; including assignment of dower; establishment of disputed boundaries; partition of land, and partition of personal property. 2. Suits by which some *general* right, either legal or equitable, is established; including bills of peace; bills *quia timet*; quieting title; suits to establish a will; suits to construe a will. 3. Suits by which some *particu-*

lar estate, interest, or right, legal or equitable, is established; including statutory suit to quiet title; removing a cloud from title; strict foreclosure of a mortgage or pledge; redemption of mortgages or pledges.

⁵ This group contains three main classes: 1. Specific performance of contracts; 2. Specific enforcement of obligations arising from trusts; 3. Specific enforcement of obligations arising from relations analogous to trusts; including suits against fiduciary persons; suits against corporations and their officers; administration suits against executors and administrators.

⁶ Embracing foreclosure of mortgages of real and personal property and of pledges, by judicial sale; enforcement of equitable liens; marshaling of securities; enforcement of the equitable contracts of married women; and creditors' suits.

Group consists of remedies in which the final relief is wholly *pecuniary*, and is obtained in the form of a general pecuniary recovery.¹ 8. The Eighth Group contains certain additional remedies which have been created and conferred by statute in several of the states, and which therefore do not belong to the original jurisprudence of equity nor to the general equitable jurisdiction.²

§ 1317. Remedies Acting in Personam or in Rem.—

Before taking up these various divisions in their order, I shall present with more of practical detail some incidents common to many large classes of equitable remedies which have been alluded to in a previous volume. The fundamental doctrine of equity as originally administered has already been explained: that its remedies and decrees operated *in personam* upon defendants, and not *in rem* upon the subject-matter; that a decree was not of itself a legal title, nor did it transfer title to the plaintiff.³ This original doctrine has been abrogated for all classes of remedies to which it could apply by statutory legislation in a large number of the states.⁴ This legislation may

¹ This group contains the following particular suits: By assignees of things in action, equitable assignees of a fund, etc.; by persons entitled to participate in a common fund; for contribution in general; suits growing out of suretyship, for exoneration, contribution, or subrogation; suits growing out of partnership; suits for an accounting in general; recovery of damages.

² In this statutory group should be placed suits for divorce; proceedings in the nature of an inquisition, for the appointment of committees over lunatics, persons of unsound mind, and habitual drunkards; statutory suits to dissolve and wind up corporations; or to remove corporate officers for cause, or for the appointment of officers.

³ See *ante*, vol. 1, §§ 134, 135, 170, 428-431, where this doctrine is fully explained; Penn v. Lord Baltimore, 1 Ves. Sr. 444; 2 Lead. Cas. Eq., 4th Am. ed., 1806; Proctor v. Ferebee, 1 Ired. Eq. 143; 36 Am. Dec. 34; [Gay v. Parpart, 106 U. S. 679, 690.]

⁴ This legislation is, of course, confined to remedies which in some way relate to or deal with title or estates, legal or equitable, in specific property. The most important modifications referred to in the text are the following: In some statutes of the first type the language is positive and peremptory that the decree shall operate to transfer the title, etc.; in others it is permissive,—the court may provide in the decree that it shall operate to transfer the title in case the defendant neglects or refuses to obey its mandates. Similar variations are found in the statutes of the second type. The following are the most important of these statutes:—

Alabama: Code 1876, p. 848, secs. 3899 (3469).

Arkansas: Gantt's Dig. of Stats. 1874, p. 675, secs. 3640, 3641; p. 836, secs. 4783, 4785, 4787.

Connecticut: Pub. Acts 1875, p. 63, c. 97, sec. 26.

Delaware: Rev. Stats. 1874, p. 571, c. 95, sec. 12.

be reduced to two general types: 1. That by which the decree itself, without any act of the defendant or of an officer on his behalf, becomes a title, and vests a legal estate in the subject-matter in the plaintiff; 2. That by which a commissioner, master, or other officer of the court executes the decree, and through his conveyance or

Georgia: Code 1882, p. 1106, sec. 4209 (4150); [Clements v. Tillman, 79 Ga. 451; 11 Am. St. Rep. 441.]

Illinois: Hurd's Rev. Stats. 1880, p. 191, c. 22, secs. 46, 47.

Indiana: Davis's Rev. Stats. 1876, p. 237, secs. 542, 544, 549.

Iowa: 2 Miller's Rev. Code 1880, p. 722, secs. 2886, 2888.

Kansas: Dassel's Comp. Laws 1881, p. 654, art. 17, c. 80, sec. 400.

Kentucky: Bullitt's Codes 1876, p. 79, secs. 394, 396.

Louisiana: Code of Practice 1875, sec. 636.

Maine: Rev. Stats. 1871, p. 582, c. 77, sec. 7; c. 111, secs. 6, 7, 8.

Maryland: Rev. Code 1878, p. 643, art. 65, sec. 73; [art. 16, secs. 26, 27; Livingston v. Hall, 73 Md. 386].

Massachusetts: Pub. Stats. 1882, p. 797, c. 142, sec. 1.

Michigan: 2 Comp. Laws 1871, p. 1541, c. 176, sec. (5099) 63; pp. 1419-1421, c. 162, secs. (4530) 1, (4536) 7, (4538) 9, (4541) 12.

Minnesota: Young's Gen. Stats. 1878-80, p. 818, c. 75, sec. 32; p. 611, c. 58, secs. 1, 7.

Mississippi: Rev. Code 1880, p. 535, c. 59, sec. 1954.

Missouri: 1 Rev. Stats. 1879, p. 464, secs. 2760, 2761; [sec. 3692; Sensenderfer v. Kemp, 83 Mo. 581; Bohart v. Chamberlain, 99 Mo. 622.]

Nebraska: Brown's Comp. Stats. 1881, p. 585, sec. 429 b; p. 587, sec. 451; pp. 249-251, secs. 323, 329, 331, 334.

New Hampshire: Gen. Laws 1878, p. 489, c. 209, sec. 9.

New Jersey: Rev. of Stats. 1877, p. 115, sec. 63.

New York: Code Civ. Proc. (new code), sec. 718.

North Carolina: Tourgee's Code Civ. Proc. 1878, sec. 215.

Ohio: Seney's Code Civ. Proc. 1874, secs. 375, 395; Rev. Stats. 1879, secs. 5318, 5399.

Oregon: Gen. Laws 1874; Code Civ. Proc., sec. 402.

Tennessee: 2 Stats. 1871 (Thompson and Steger's ed., 1872), secs. 4478, 4484, 4485, 4486, 4487, 4488.

Texas: Rev. Stats. 1879, p. 210, art. 1338.

Vermont: Rev. Laws 1880, p. 204, c. 43, secs. 766-770.

Virginia: Code 1873, p. 1164, c. 182, sec. 1.

West Virginia: Kelly's Rev. Stats. 1878, p. 929, c. 163, sec. 1; c. 22, sec. 1.

The following cases illustrate the provision that the decree itself is a title, or operates to transfer the title: King v. Bill, 28 Conn. 593; Price v. Sisson, 13 N. J. Eq. 168; Griffith v. Phillips, 3 Grant Cas. 381; Young v. Frost, 1 Md. 377, 403; Taylor v. Boyd, 3 Ohio, 337; 17 Am. Dec. 603; Randall v. Pryor, 4 Ohio, 424; Penn v. Hayward, 14 Ohio St. 302; Battle v. Bering, 7 Yerg. 529; 27 Am. Dec. 526; Gitt v. Watson, 18 Mo. 274; Hoffman v. Stigers, 28 Iowa, 302; [Macklin v. Allenberg, 100 Mo. 337.]

Whenever the decree itself thus operates to transfer title, a reversal of the decree on appeal necessarily destroys this effect as between the parties themselves, divests the title from the party to whom it had been transferred, and reverts it in the party from whom it had passed. But if the decree had been executed by means of a conveyance, and the title had thus passed to a bona fide purchaser, before the appeal, a reversal may not divest him of the title or compel him to reconvey: See ante, Stats. of Delaware; Taylor v. Boyd, 3 Ohio, 337; 17 Am. Dec. 603. As to the time when the title passes by operation of the decree, whether from the date of the decree or by relation from the date of the commencement of the suit, see Shotwell v. Lawson, 30 Miss. 27; 64 Am. Dec. 145; King v. Bill, 28 Conn. 593.

other official act transfers the legal estate from the defendant to the plaintiff, or otherwise vests the plaintiff with title. Both these types are often found in the statutes of the same state, and they are subject to minor modifications, as shown by the foot-note, which contains a list of the states and of the statutes. In all cases where an instrument is directed to be executed by an officer, the statutes provide that it shall have exactly the same effect as if executed by the party himself. These statutes do not generally interfere with the original power of courts of equity to enforce obedience to their decrees by the parties themselves, and to punish such parties for their disobedience by attachment, fine, imprisonment, or sequestration. The operation of these statutes is confined to the territorial limits and jurisdiction of the states in which they are respectively enacted. It does not extend to decrees of the United States courts. The effect of equitable remedies granted and decrees rendered by the United States courts, in the absence of legislation by Congress, is governed by the original doctrine of equity; their decrees do not transfer title; they must be executed by the parties, and obedience is compelled by proceedings in the nature of punishment for contempt, attachment, or sequestration.¹ There are, of course, classes of remedies to which this legislation cannot apply,—as, for example, decrees prohibiting any act, general pecuniary recoveries, analogous to money judgments at law, and many purely ancillary or provisional reliefs.

§ 1318. Remedies in Personam beyond the Territorial Jurisdiction.—The power to act *in personam*, through

¹ This is so, although the property which is the subject-matter of the decree is situated within a state which has legislated in the manner above described; *Watkins v. Holman*, 16 Pet. 25, 26; *Briggs v. French*, 1 Sum. 504; *Lyman v. Lyman*, 2 Paine, 11, 13; *Tardy v. Morgan*, 3 McLean, 358; *Massie v. Watts*, 6 Cranch, 148; *Shepherd v. Comm'rs of Ross Co.*, 7 Ohio,

271. [See also *Hart v. Sansom*, 110 U. S. 155, in which the rule that equity acts *in personam* is examined at length. In this latter case, the power of a state to provide that when a defendant is not within the jurisdiction of the court, or refuses to perform, performance in his behalf may be had by a trustee appointed by the court was directly recognized.]

their remedies, is still held by all courts of equity, even in presence of the foregoing legislation. Of this nature must always be the remedies when the subject-matter, either real or personal property, is situated beyond the territorial jurisdiction of the court, in another state or country. The jurisdiction to grant such remedies is well settled. Where the subject-matter is situated within another state or country, but the parties are within the jurisdiction of the court, any suit may be maintained and remedy granted which *directly* affect and operate upon the person of the defendant, and not upon the subject-matter, although the subject-matter is referred to in the decree, and the defendant is ordered to do or to refrain from certain acts toward it, and it is thus ultimately but *indirectly* affected by the relief granted. As examples of this rule, suits for specific performance of contracts, for the enforcement of express or implied trusts, for relief on the ground of fraud, actual or constructive, for the final accounting and settlement of a partnership, and the like, may be brought in any state where jurisdiction of defendant's person is obtained, although the land or other subject-matter is situated in another state, or even in a foreign country.¹ On the other hand, where the suit is strictly

¹ This rule applies to the United States courts as well as to the state courts, and is also well settled in England; Penn v. Lord Baltimore, 1 Ves. Sr. 444; 2 Lead. Cas. Eq., 4th Am. ed., 1806; Caldwell v. Carrington's Heirs, 9 Pet. 86; Watkins v. Holman, 16 Pet. 25; Massie v. Watts, 6 Cranch, 148; Briggs v. French, Heirs v. Brents, 1 McLean, 167; Watts 1 Sum. 504; Carrington's v. Waddle, 1 McLean, 200; Tardy v. Morgan, 3 McLean, 358; Moore v. Jaeger, 2 McAr. 465; Wood v. Warner, 15 N. J. Eq. 81; Brown v. Desmond, 100 Mass. 267; Davis v. Parker, 14 Allen, 94; Pingree v. Coffin, 12 Gray, 288, 304; Gardner v. Ogden, 22 N. Y. 327, 332-339; 78 Am. Dec. 192; Newton v. Bronson, 13 N. Y. 587; 67 Am. Dec. 89; Bailey v. Ryder, 10 N. Y. 363; De Klyn v. Watkins, 3

Sand. Ch. 185; Cleveland v. Burrill, 25 Barb. 532; Sutphen v. Fowler, 9 Paige, 280; Hawley v. James, 7 Paige, 213; 32 Am. Dec. 623; Mead v. Merritt, 2 Paige, 402; Dickinson v. Hoomes's Adm'r, 8 Gratt. 353; Moore v. Hood, 9 Rich. Eq. 311; 70 Am. Dec. 210; Ross v. Southwestern R. R. Co., 53 Ga. 514; Guild v. Guild, 16 Ala. 121; Topp v. White, 12 Heisk. 165; Penn v. Hayward, 14 Ohio St. 302; Henry v. Doctor, 9 Ohio, 49; Wills v. Cowper, 2 Ohio, 124; Olney v. Eaton, 66 Mo. 563. [The following recent cases further illustrate this rule: McGee v. Sweeney, 84 Cal. 100 (an action to compel the conveyance of property outside the state); Montgomery v. United States, 36 Fed. Rep. 4 (an action for specific performance); Cole v. Cunningham, 133 U. S. 107; Wilson v. Joseph, 107 Ind. 490; Rick-

local, the subject-matter is specific property, and the relief when granted is such that it *must* act directly upon the subject-matter, and not upon the person of the defendant, the jurisdiction must be exercised in the state where the subject-matter is situated.¹

ett v. Ferguson, 45 Ark. 177; 55 Am. Rep. 545. Actions to restrain the prosecution of suits in other states: Davis v. Morriss, 76 Va. 21 (a suit against trustees for an accounting); Carver v. Peck, 131 Mass. 292 (a suit to restrain the transfer of property outside the jurisdiction of the court); Bethell v. Bethell, 92 Ind. 318 (an action for the reformation of a deed); Baker v. Rockabrand, 118 Ill. 365 (rescission of conveyance); Johnson v. Gibson, 116 Ill. 294 (suit by creditors to set aside fraudulent conveyance); Poindexter v. Burwell, 82 Va. 507 (to compel conveyance of land outside of the state).]

¹ For example, a suit to abate a nuisance, and, it seems, a suit to determine the title to specific land: Miss. & Mo. R. R. v. Ward, 2 Black, 485; North Ind. R. R. v. Mich. Cent. R. R., 15 How. 233; 5 McLean, 414; Massie v. Watts, 6 Cranch, 148. As to injunctions restraining threatened acts in another state, see Western Union

Tel. Co. v. West. etc. R. R., 8 Baxt. 54; Atlantic etc. Tel. Co. v. Baltimore etc. R. R., 14 Jones & S. 377. [See also § 1361, note. A suit to foreclose a mortgage on land situated beyond the territorial jurisdiction of the court will not be sustained: Farmers' L. & T. Co. v. Postal Tel. Co., 55 Conn. 334; 3 Am. St. Rep. 53; nor will a suit to partition lands so situated: Wimer v. Wimer, 82 Va. 890; nor, in England, will the courts of equity take jurisdiction of any case of a contested claim depending upon the title to real estate situated in a foreign country, although the parties are residents of England: Graham v. Massey, 23 Ch. Div. 746. In Wicks v. Caruthers, 13 Lea, 353, it was held that a court of equity would not attempt to compel a party to convey land unless he is a resident within the territorial jurisdiction of the court, although process was served on him while he was within the jurisdiction.]

FIRST GROUP.

REMEDIES PURELY ANCILLARY AND PROVISIONAL.

CHAPTER FIRST.

INTERPLEADER.

ANALYSIS.

- § 1319. Description of this group.
- § 1320. General nature and objects of interpleader.
- § 1321. The claims, legal or equitable.
- § 1322. Essential elements.
- § 1323. *First.* The same thing, debt, or duty.
- § 1324. *Second.* Privity between the opposing claimants.
- § 1325. *Third.* Plaintiff a mere stake-holder.
- § 1326. *Fourth.* No independent liability to one claimant.
- § 1327. By bailees, agents, tenants, and parties to contracts.
- § 1328. Pleadings and other procedure.
- § 1329. Interpleader in legal actions by statute.

§ 1319. **Description of This Group.**—The distinguishing characteristic of the remedies belonging to this group is, that they determine no primary rights, and grant no final reliefs, either directly or indirectly. They are, in fact, instruments and means by which the court is enabled more conveniently and perfectly to adjudicate upon the *ultimate* rights and interests of the parties, and to award the *final* reliefs, in the further judicial proceedings to which they are auxiliary, and of which they are really the preliminary stage. These remedies are therefore, in every sense of the terms, ancillary and provisional.

§ 1320. **Interpleader—General Nature and Object.**—I purpose in this chapter to describe the general equitable jurisdiction to grant the remedy of interpleader indepen-

dent of statute; and afterwards to notice briefly the modern statutes, some of which may perhaps have enlarged that jurisdiction, but most of which have simply conferred a similar jurisdiction upon courts of law, to be exercised in certain kinds of legal actions.¹ Where two or more persons, whose titles are connected by reason of one being derived from the other, or of both being derived from a common source, claim the same thing, debt, or duty, by different or separate interests, from a third person, and he, not knowing to which of the claimants he ought of right to render the debt or duty, or to deliver the thing, fears he may be hurt by some of them, he may maintain a suit and obtain against them the remedy of interpleader. In his bill of complaint he must state his own rights and their several claims, and pray that they may interplead, so that the court may adjudge to whom the thing, debt, or duty belongs, and he may be indemnified. If any suits at law have been brought against him, he may also pray that such proceedings be restrained until the right be determined.² The object of the suit is, that the

¹ Under the ancient common law, the relief of interpleader was allowed in two special cases in a legal action by a court of law: when two or more persons had made a joint bailment and then brought separate actions of detinue against the depository for the thing bailed; and when the thing came into the holder's possession by finding, and two or more persons claiming to be owners sued him in separate actions of detinue. Modern statutes, English and American, have enabled courts of law to grant a similar relief, in a summary manner, in certain legal actions, but this legislation has no connection with the ancient common-law jurisdiction above mentioned. For a more full account of this common-law relief, see Mitford's Eq. Pl., Jeremy's ed., 141, 142; Crawshay v. Thornton, 2 Mylne & C. 1.

² This description is taken, with some additions and alterations to conform to later decisions, from Mitford's Equity Pleading, 58, 59. As to the general nature of the remedy, see

Crawshay v. Thornton, 2 Mylne & C. 1; Sieveking v. Behrens, 2 Mylne & C. 581; Glyn v. Duesbury, 11 Sim. 139, 147; Langston v. Boylston, 2 Ves. 101, 103, 109; Jones v. Thomas, 2 Smale & G. 186; Prudential Ass. Co. v. Thomas, L. R. 3 Ch. 74; Farley v. Blood, 30 N. H. 354; Lincoln v. Rutland etc. R. R., 24 Vt. 639; Dorn v. Fox, 61 N. Y. 264; Shaw v. Coster, 8 Paige, 339; 35 Am. Dec. 690; Mohawk etc. R. R. v. Clute, 4 Paige, 384; Bedell v. Hoffman, 2 Paige, 199; Badeau v. Rogers, 2 Paige, 209; Bell v. Hunt, 3 Barb. Ch. 391; Richards v. Salter, 6 Johns. Ch. 445; Atkinson v. Manks, 1 Cow. 691; Cady v. Potter, 55 Barb. 463; Mount Holly etc. Tp. Co. v. Ferree, 17 N. J. Eq. 117; Strange v. Bell, 11 Ga. 103; Barton v. Black, 32 Ga. 53; Hayes v. Johnson, 4 Ala. 267; Michigan etc. Co. v. White, 44 Mich. 25; Cogswell v. Armstrong, 77 Ill. 139; Hathaway v. Foy, 40 Mo. 540; Orr Water Ditch Co. v. Larcombe, 14 Nev. 53; Pfister v. Wade, 56 Cal. 43; [McWhirter v. Halstead, 24 Fed. Rep.

conflicting claimants shall litigate the matter among themselves, without involving the stake-holder in their controversy, with which he has no interest. It is plain, therefore, that the plaintiff can obtain no *specific* relief. So far as he is concerned, upon his filing the bill, and

828; *Crane v. McDonald*, 118 N. Y. 648; *Wakeman v. Kingsland*, 46 N. J. Eq. 113.

Rationale of the Remedy.—It is sometimes supposed that the remedy of interpleader is allowed to avoid the risk of two recoveries. This is entirely a mistaken view. If a party has in any way made himself liable, even for the same demand, to two claimants, he is not entitled to an interpleader. It is the essential fact that he should actually be liable to only one of the claimants. The true *rationale* of interpleader is, that the party thereby avoids the risk of being vexed by two or more suits. Even though there is no danger of his being compelled to pay the same demand twice, the danger of two suits against him, with the consequent trouble and expense, is the sufficient ground for the remedy: *Crawford v. Fisher*, 1 Hare, 436, 441; *East and West India Dock Co. v. Littledale*, 7 Hare, 57, 60; *Langston v. Boylston*, 2 Ves. 101; *Sablicich v. Russell*, L. R. 2 Eq. 441; *Greene v. Mumford*, 4 R. I. 313; *School District v. Weston*, 31 Mich. 85; *Pfister v. Wade*, 56 Cal. 43. In *Crawford v. Fisher*, *Wigram, V. C.*, said: "The office of an interpleading suit is, not to protect a party against a *double liability*, but against double vexation in respect of *one liability*. If the circumstances of a case show that the plaintiff is liable to both claimants, that is no case for interpleader. It is of the essence of an interpleading suit that the plaintiff shall be liable to one only of the claimants; and the relief which the court affords him is against the vexation of two proceedings on a matter which may be settled in a single suit." The supreme object of an interpleader is to protect the plaintiff,—the stakeholder,—and not the claimants against him; to protect him from the danger and vexation of two opposing suits for the same demand by those claimants, while he is ready and willing to

pay the demand to the one who is judicially ascertained to be entitled to it; *Trigg v. Hitz*, 17 Abb. Pr. 436; *Farley v. Blood*, 30 N. H. 354; *Mich. etc. Co. v. White*, 44 Mich. 25; *Newhall v. Kastens*, 70 Ill. 156; *Nelson v. Barter*, 2 Hem. & M. 334; 33 L. J. Ch. 705; 10 Jur., N. S., 832. [The plaintiff's risk may depend upon a doubtful and disputed question of law, as well as of fact: *Dorn v. Fox*, 61 N. Y. 270; *Crane v. McDonald*, 118 N. Y. 648, 654; but see *Board of Supervisors v. Alford*, 65 Miss. 63; 7 Am. St. Rep. 637.] Such danger must be real; a mere suspicion of risk will not be sufficient to support a bill: *Blair v. Porter*, 13 N. J. Eq. 267; [see also *Baltimore and Ohio R. Co. v. Arthur*, 90 N. Y. 234;] and this danger must not only exist when the bill is filed, but must continue until the decree: *Kerr v. Union Bank*, 18 Md. 396.

Such being the theory of the remedy, it is not essential that any suit should have been actually commenced by either claimant against the plaintiff: *Angell v. Hadden*, 15 Ves. 244; *Morgan v. Marsack*, 2 Mer. 107; *Farley v. Blood*, 30 N. H. 354; *Richards v. Salter*, 6 Johns. Ch. 445; *Yates v. Tisdale*, 3 Edw. Ch. 71; *Schuyler v. Pelissier*, 3 Edw. Ch. 191; *Strange v. Bell*, 11 Ga. 103; *Gibson v. Goldthwaite*, 7 Ala. 281; 42 Am. Dec. 592. It is enough that the conflicting claimants make their respective claims and threaten suit: *Langston v. Boylston*, *supra*; *Providence Bank v. Wilkinson*, 4 R. I. 507; 70 Am. Dec. 160; *Briant v. Reed*, 14 N. J. Eq. 271; *Yarborough v. Thompson*, 3 Smedes & M. 291; 41 Am. Dec. 626. The plaintiff must, however, positively allege an actual claim made by each defendant: *State Ins. Co. v. Gennett*, 2 Tenn. Ch. 82. [It is held that the plaintiff cannot interplead claimants who have reduced their claims to judgment, as this would be to increase instead of diminish the number of suits: *McKinney v. Kuhn*, 59 Miss. 186.]

surrendering up the thing or money into the custody of the court, *his* remedy is exhausted by the decree that the defendants do interplead with each other, and that he be freed from or indemnified against their demands, and that he recover his costs; with the result of their dispute he has no concern. The ground of the jurisdiction is plain. The party seeking the remedy is exposed to the hazard, vexation, and expense of several actions at law for the same demand, while he is ready and willing to satisfy that demand in favor of the claimant who establishes his right thereto. For this liability the law furnishes no adequate remedy, and in most instances no remedy whatever.

§ 1321. **The Claims, Legal or Equitable.**—The equitable jurisdiction exists, although both or all the conflicting claims against the stake-holder are legal,¹ since it depends upon the fact that distinct claims are made, rather than upon their intrinsic nature as being legal or equitable. It is not necessary, however, that all the claims should be legal; the remedy is granted when one of them is legal and the other equitable.² Indeed, if one or more of the conflicting claims are purely equitable, there is the stronger reason for a resort to the equity

¹ *Lowndes v. Cornford*, 18 Ves. 299.

² *Lowndes v. Cornford*, *supra*; *Morgan v. Marsack*, 2 Mer. 107; *Wright v. Ward*, 4 Russ. 215; *Paris v. Gilham*, Coop. 56; *Martinus v. Helmuth*, 2 Ves. & B. 412; *Smith v. Hammond*, 6 Sim. 10; *Crawford v. Fisher*, 10 Sim. 479; *Hamilton v. Marks*, 5 De Gex & S. 638; *Prudential Ass. Co. v. Thomas*, L. R. 3 Ch. 74; *Duke of Bolton v. Williams*, 4 Brown Ch. 297, 309; *Farley v. Blood*, 30 N. H. 354; *Richards v. Salter*, 6 Johns. Ch. 445; *Yates v. Tisdale*, 3 Edw. Ch. 71; *Schuyler v. Pelissier*, 3 Edw. Ch. 191; *Lozier's Ex'rs v. Van Saun's Adm'rs*, 3 N. J. Eq. 325; *Oil Run Petroleum Co. v. Gale*, 6 W. Va. 525; *Strange v. Bell*, 11 Ga. 103; *Burton v. Black*, 32 Ga. 53; *Gibson v. Goldthwaite*, 7 Ala. 281; 42 Am. Dec. 592; *Whitney v. Cowan*, 55 Miss. 626, 647; *Newhall v. Kastens*, 70 Ill. 156.

In England the necessity of a resort to equity is removed, although the equity jurisdiction is not at all affected, by the statute of 1 & 2 Wm. IV., c. 58, sec. 1, as amended and enlarged by the common-law procedure act (23 & 24 Vict., c. 126, sec. 12), which enabled a court of law, on motion, to direct what amounts to an interpleader in actions of debt, assumpsit, trover, and detinue. Under the present system of procedure, equitable claims may be adjudicated upon in an interpleader issue connected with a legal action: *Rusden v. Pope*, L. R. 3 Ex. 269; *Engelback v. Nixon*, L. R. 10 Com. P. 645; *Duncan v. Cashin*, L. R. 10 Com. P. 554; *Attenborough v. London and St. Katharine's Dock Co.*, L. R. 3 C. P. D. 450; see *Langton v. Horton*, 3 Beav. 464. Analogous statutes have been passed in many American states.

jurisdiction; and prior to recent legislation in England and in the United States, such a resort was indispensable under those circumstances.

§ 1322. **Essential Elements.**—From the description given in a previous paragraph, and from the whole course of authorities, it is clear that the equitable remedy of interpleader, independent of recent statutory regulations, depends upon and requires the existence of the four following elements, which may be regarded as its essential conditions: 1. The same thing, debt, or duty must be claimed by both or all the parties against whom the relief is demanded; 2. All their adverse titles or claims must be dependent, or be derived from a common source; 3. The person asking the relief—the plaintiff—must not have nor claim any interest in the subject-matter; 4. He must have incurred no independent liability to either of the claimants; that is, he must stand perfectly indifferent between them, in the position merely of a stake-holder.¹ As the original equitable jurisdiction is founded, to a great extent, upon these four propositions, I shall examine them separately.

§ 1323. **First. The Same Thing, Debt, or Duty.**—The same thing, debt, or duty must be claimed by both the parties against whom the interpleader is demanded.²

¹ [Quoted by Sawyer, J., in *Wells, Fargo, & Co. v. Miner*, 25 Fed. Rep. 533, 537.]

² *Desborough v. Harris*, 5 De Gex, M. & G. 439, 455. In *Glyn v. Duesbury*, 11 Sim. 139, 145, Shadwell, V. C., said: "*Where the claims made by the defendants are of different amounts, they can never be identical; but where they are the same in amount, that circumstance goes far to determine their identity. The amount, however, may not be sufficient of itself to determine the identity; for the amount may be the same and the debt may be different.*" This dictum was approved in *Pfister v. Wade*, 56 Cal. 43. In my opinion, however, that portion of the dictum which is italicized—the statement that claims of different amounts can never be identical—is incorrect;

it seems alike opposed to principle and to authority. Where both defendants claim one, single, undivided debt, technically so called, the statement is undoubtedly true; a difference in their amounts would be fatal to their identity. But it is clearly not necessarily so where the claims are for unliquidated damages. Where, for example, a chattel is in the plaintiff's hands, to which both defendants claim title, they do not sue to recover the article itself, but allege a technical conversion, and seek to recover damages,—the value of the chattel. Here the claim of the defendants would not be for a "thing," nor for a "debt," but it would be for a "duty,"—a chose in action. If each defendant alleged a different value, and claimed a different amount of damages, the duty

This requisite results from the very nature and object of the remedy. If the subject in dispute has a bodily existence, — is a *thing*, — there can be no doubt nor question as to the identity. The difficulty in applying the rule arises where the subject is a chose in action; and then the identity must be determined in each particular case, not by any general rules, but by the nature, constitution, and incidents of the debt, demand, or duty itself.

asserted would still be identically the same in each demand. Another instance of difference in the amounts claimed by the different defendants, where the debt or duty may still be the same, occurs in cases where a fund being in plaintiff's hands, the whole of it is claimed by one defendant, and parts of it are claimed by the others. With regard to such cases, Christianity, J., said, in *School District v. Weston*, 31 Mich. 85: "Upon the great weight of authority, both English and American, a much more liberal and reasonable rule has been established, and bills of interpleader have been frequently maintained, where the several claimants, instead of claiming the whole fund or matter in dispute, have claimed different portions of the fund, when the aggregate of all the claims exceeded the full amount of the fund; and the complainant being, as in the present case, virtually a stake-holder, and unable to determine to whom or in what proportions the payments should be made." In this case the plaintiff had let a contract for building a school-house for a specified sum to a contractor, and portions of this contract price were claimed by subcontractors and material-men, the total amount of their claims exceeding the whole contract price. See also, as examples of such partial claims, *Yates v. Tisdale*, 3 Edw. Ch. 71; *Fargo v. Arthur*, 43 How. Pr. 193; *Newhall v. Kastens*, 70 Ill. 156; *Board of Education v. Scoville*, 13 Kan. 17. Where the same property had been taxed to the owner in two counties, in some cases for different amounts, in others for the same amount, a bill of interpleader by the owner to determine which of the counties was entitled to the tax has been maintained: See *Thomson v. Ebbets*, *Hopk. Ch.* 272;

Mohawk etc. R. R. v. Clute, 4 Paige, 384, 391; *Redfield v. Supervisors*, *Clarke Ch.* 42; *Dorn v. Fox*, 61 N. Y. 264; but, *per contra*, see *Greene v. Mumford*, 4 R. I. 313. It is difficult to perceive how the tax levied by two different counties, even though the amount of each tax is the same, is one and the same debt or duty, so as to sustain a bill of interpleader.

Where a *chose in action* is the subject-matter, it is impossible to lay down any general rule by which its identity shall be determined. The circumstances of each case can alone disclose whether the same debt or duty is claimed by all the defendants: See *City Bank v. Bangs*, 2 Paige, 570; *Briant v. Reed*, 14 N. J. Eq. 271; *Dodd v. Bellows*, 29 N. J. Eq. 127; *Leddell's Ex'r v. Starr*, 20 N. J. Eq. 274; *Salisbury Mills v. Townsend*, 109 Mass. 115; *Oil Run Petroleum Co. v. Gale*, 6 W. Va. 525; *Pfister v. Wade*, 56 Cal. 43; [*Blue v. Watson*, 59 Miss. 619.]

In other cases, one defendant claiming rent for certain premises, and the other claiming damages for their use and occupation, the demands were held not to be the same: *Dodd v. Bellows*, 29 N. J. Eq. 127; *Johnson v. Atkinson*, 3 Anstr. 798. If the conflicting claims relate to a specific "thing" in the plaintiff's possession, the identity is clear, and the value alleged is immaterial: *Cady v. Potter*, 55 Barb. 463. In *Lozier's Ex'rs v. Van Saun's Adm'rs*, 3 N. J. Eq. 325, a bill of interpleader was sustained, where the controversy was as to which of the defendants was entitled to receive payment of certain notes made by plaintiff's testator, although the amount to be paid was not ascertained; the amount, it was held, could not vary the rights of the claimants.

§ 1324. **Second. Privity between the Opposing Claimants.** — A second requisite is, that the adverse titles of the claimants must be connected, or dependent, or one derived from the other, or both derived from a common source. It is not every instance of conflicting claims against a person for the same thing, debt, or duty which will entitle him to the remedy of an interpleader. Where there is no privity between the claimants, where their titles are independent, not derived from a common source, but each asserted as wholly paramount to the other, the stake-holder is obliged, in the language of the authorities, to defend himself as well as he can against each separate demand; a court of equity will not grant him an interpleader.¹

¹ *Pearson v. Cardon*, 2 Russ. & M. 606, 609-612; *Crawshay v. Thornton*, 2 Mylne & C. 1, 19-24; *Nickolson v. Knowles*, 5 Madd. 47; *Cooper v. De Tastet*, Tam. 177; *Pfister v. Wade*, 56 Cal. 43; [*Third Nat. Bank v. Lumber Co.*, 132 Mass. 410.] This doctrine, which was left somewhat doubtful by the previous cases, was finally settled by the decision of Lord Brougham in *Pearson v. Cardon*, and of Lord Cottenham in *Crawshay v. Thornton*. It finds its most frequent application in cases of a tenant interpleading his landlord and a third person claiming under paramount title, of a bailee interpleading his bailor, and an adverse claimant asserting a paramount title, and of an agent interpleading his principal and an adverse paramount claimant. Examples of these cases are given in a subsequent paragraph.

Such being the doctrine, it is a manifest imperfection of the equity jurisdiction that it should be so limited. A person may be, and is, exposed to danger, vexation, and loss from conflicting *independent* claims to the same thing, as well as from claims which are dependent; and there is certainly nothing in the nature of the remedy which need prevent it from being extended to both classes of demands: [*Crane v. McDonald*, 118 N. Y. 648, 657. The court declined to decide whether the doctrine exists in New York.] It is not surprising, therefore, that courts have sometimes ignored

this doctrine in their decisions, or have been ready to admit exceptions to its operation. In the common-law procedure act of 1860, which provides for a summary interpleader by motion in legal actions, it was enacted that the order of interpleader may be made "though the titles of the claimants have not a common origin, but are adverse to and independent of each other." In *Attenborough v. London etc. Dock Co.*, L. R. 3 C. P. D. 450, which was an interpleader proceeding in a legal action, the court of appeal held that the statute above quoted had abrogated this doctrine as laid down in *Crawshay v. Thornton*, at all events in the proceedings authorized by the statute. Bramwell, L. J., who was one of the commissioners who drew up the statute, said (p. 456): "From my own knowledge as one of the common-law commissioners, I can say that it was intended to do away with the effect of that decision." Baggallay, L. J., a very eminent equity lawyer, said (p. 458): "I may go further, and say that, in my opinion, if, after the common-law procedure act of 1860, a bill of interpleader had been filed, raising facts like those in *Crawshay v. Thornton*, any judge of the court of chancery would have felt himself no longer bound by the somewhat narrow principle laid down by Lord Cottenham, but would have acted upon the fuller powers contained in that statute." The Code of Civil

§ 1325. **Third. Plaintiff a Mere Stake-holder.**—The person seeking the relief must not have nor claim any interest in the subject-matter. He must occupy the position of a stake-holder. He must stand entirely indifferent between the conflicting claimants, and be ready and willing to surrender the entire thing in dispute, or to pay the entire debt, or render the entire duty, without any charge, deduction, or commission as against the one rightfully entitled. He cannot mingle up a demand of his own upon the property or fund, with the demand that the other persons shall interplead. As soon as the decree is made that the defendants do interplead, and that he be indemnified, the plaintiff must be wholly without the controversy.¹ The interest, however, which shall

Procedure of California, as lately amended, in section 386, goes even further, and provides for an interpleader, "although the titles or claims have not a common origin, *or are not identical.*" [See this section applied in *Wells, Fargo, & Co. v. Miner*, 25 Fed. Rep. 533.] This last provision, that the claims need not be identical, is certainly unnecessary and most unreasonable; it violates the whole ground and reason upon which the remedy is based; if interpreted literally by the courts, it would remove almost every limitation upon this kind of suit, and render it a means of vexation and annoyance. There is no valid objection to the requisite that the opposing claims should be identical; the only question has been, *What is such identity?* Experience shows the danger of legislative intermeddling with doctrines long settled and approved by the consenting judgments of able courts.

¹ *Mitchell v. Hayne*, 2 Sim. & St. 63; *Langston v. Boylston*, 2 Ves. 101; *Moore v. Usher*, 7 Sim. 383; *Bignold v. Audland*, 11 Sim. 23; *Hoggart v. Cutts, Craig & P.* 197; *Lincoln v. Rutland etc. R. R.*, 24 Vt. 639; *Atkinson v. Manks*, 1 Cow. 691; *Shaw v. Coster*, 8 Paige, 339; 35 Am. Dec. 690; *Lozier's Ex'rs v. Van Saun's Adm'rs*, 3 N. J. Eq. 325; *Kerr v. Union Bank*, 18 Md. 396; *Burton v. Black*, 32 Ga. 53; *Adams v. Dixon*, 19 Ga. 513; 65

Am. Dec. 608; *Anderson v. Wilkinson*, 10 Smedes & M. 601; *Cullen v. Dawson*, 24 Minn. 66; [Baltimore etc. R. R. v. Arthur, 90 N. Y. 234; *Stone v. Reed*, 152 Mass. 179; *Blue v. Watson*, 59 Miss. 619; Appeal of *Bridenburg Mfg. Co.*, 106 Pa. St. 275.] While the plaintiff cannot set up a claim, charge, or lien upon the fund, which shall enter into the litigation, and form a part of the controversy: *Wakeman v. Dickey*, 19 Alb. Pr. 24; it seems this rule is not without exceptions. It does not apply where the claim is admitted by both defendants: *Cotter v. Bank of England*, 2 Dowl. Pr. 728; and see *Attenborough v. London etc. Co.*, L. R. 3 C. P. D. 450; *Gibson v. Goldthwaite*, 7 Ala. 281; 42 Am. Dec. 592; *Webster v. McDaniel*, 2 Del. Ch. 297. If the plaintiff has a claim or charge on the fund, he may waive it, and maintain the suit: *Jacobson v. Blackhurst*, 2 Johns. & H. 486; [and see *Orient Ins. Co. v. Reed*, 81 Cal. 145.] It necessarily follows from the doctrine of the text that if the plaintiff expressly denies his liability in whole or in part to one of the defendants, he strikes at the very foundation of the remedy, and shows that he is not indifferent: *Moore v. Usher*, 7 Sim. 383; *Greene v. Mumford*, 4 R. I. 313; *Patterson v. Perry*, 14 How. Pr. 505; *Cogswell v. Armstrong*, 77 Ill. 139; [Williams v. Matthews, 47 N. J. Eq. 196. A denial not

defeat the relief must be in the very *thing or fund* itself which is the subject-matter of the controversy and of the suit. An interest in the legal question at issue to be determined by the result of the litigation will not prejudice the plaintiff's right to the relief; nor, it seems, a charge, lien, or claim upon the very thing or fund itself which is admitted to be valid by both the defendants. To sum up the doctrine, the plaintiff can only obtain the remedy of an interpleader; and the circumstances must be such that the entire rights of both defendants to the thing, fund, debt, or duty can be fully adjusted and determined in the one suit.¹

§ 1326. **Fourth. No Independent Liability to One Claimant.**—The party seeking the relief must have incurred no independent liability to either of the claimants. Such an independent liability may be incurred in two classes of cases: 1. In the first place, the agent, depository, bailee, or other party demanding an interpleader, in his dealings with one of the claimants, may have expressly acknowledged the latter's title, or may have bound himself by contract, so as to render himself liable upon such

in the complaint, but made on some previous occasion, is not within this rule: *Orient Ins. Co. v. Reed*, 81 Cal. 145.] As to the effect of a dispute or uncertainty with respect to the amount of the fund or debt for which plaintiff is liable, see *City Bank v. Bangs*, 2 Paige, 570; *Consociated Pres. Soc. v. Staples*, 23 Conn. 544; *Chamberlain v. O'Connor*, 1 E. D. Smith, 665; *Bender v. Sherwood*, 15 How. Pr. 258; *Patterson v. Perry*, 14 How. Pr. 505; [*Williams v. Matthews*, 47 N. J. Eq. 196; *Appeal of Bridesburg Mfg. Co.*, 106 Pa. St. 275.]

The stake-holder—the person in possession of the thing or fund, or from whom the debt or duty is owing, and against whom two or more conflicting claimants assert their demands—must necessarily be the plaintiff. No interpleader suit can be maintained by one of the contestants against the other contestant and the stake-holder: See *Sprague v. West*, 127 Mass. 471; *Hyman v. Cameron*, 46 Miss. 725;

Hathaway v. Foy, 40 Mo. 540. Furthermore, the plaintiff must be in possession of the fund, or have it in his custody, so that he can deliver or pay it in pursuance of the decree. If he has already delivered the thing or paid the fund to one of the contestants, no suit for interpleader can be maintained: *Mount Holly etc. Co. v. Ferree*, 17 N. J. Eq. 117; *Tiernan v. Rescaniere's Adm'rs*, 10 Gill & J. 217; *Vosburgh v. Huntington*, 15 Abb. Pr. 254; *Martin v. Maberry*, 1 Dev. Eq. 169.

¹ If, therefore, the plaintiff has, with respect to other property not the subject-matter of the present suit, an interest that one of the defendants shall succeed, because the decision thus made will be favorable to his own future litigation concerning that other property,—this is no objection to his maintaining a suit for an interpleader: *Oppenheim v. Leo Wolf*, 3 Sand. Ch. 571; *McHenry v. Hazard*, 45 Barb. 657; *Gibson v. Goldthwaite*, 7 Ala. 281; 42 Am. Dec. 592.

independent undertaking, without reference to his possible liability to the rival claimant upon the general nature of the entire transaction. Under these circumstances, as the plaintiff is liable at all events to one of the defendants, whatever may be their own respective claims upon the subject-matter as between themselves, he cannot call upon these defendants to interplead. He does not stand indifferent between the claimants, since one of them has a valid legal demand against him at all events.¹ Even if the acknowledgment or promise has been obtained by fraud or mistake, the right of the party thus deceived to be relieved in equity from his liability cannot be considered and sustained in an interpleader suit. 2. In the second class of cases, the independent liability of the plaintiff to one of the defendants arises from the very nature of the original relation subsisting between them, without reference to any collateral acknowledgment of title, or promise to be bound. The most important examples of such relations are those subsisting between a bailee and his bailor, an agent or attorney and his principal, a tenant and his landlord, and the like. In pursuance of the doctrine above stated, if a bailee is sued by his bailor, or an agent by his principal, or a tenant by his landlord, and at the same time a third person asserts

¹ *Crawshay v. Thornton*, 2 Mylne & C. 1, 19-24; *Suart v. Welch*, 4 Mylne & C. 305; *Jew v. Wood*, *Craig & P.* 185; *Pfister v. Wade*, 56 Cal. 43; *Tyus v. Rust*, 37 Ga. 574; 95 Am. Dec. 365; *Hatfield v. McWhorter*, 40 Ga. 269; *Cullen v. Dawson*, 24 Minn. 66; [*Wakeman v. Kingsland*, 46 N. J. Eq. 113; *McKinney v. Kuhn*, 59 Miss. 186; (claimants have reduced their demands to judgment).] As to the effect produced by the English statute of 1860, interpreted by the decision in *Attenborough v. London etc. Co.*, L. R. 3 C. P. D. 450, and the amendment of section 386 of the California Code of Civil Procedure, [applied in *Wells, Fargo, & Co. v. Miner*, 25 Fed. Rep. 533] see *ante*, in note under § 1324. Another instance of the doctrine is,

where the plaintiff, in stating the case in his bill, is obliged to admit himself to be a wrong-doer to either one of the defendants; he thus shows an independent liability to that defendant, and is not entitled to an interpleader: *Slingsby v. Boulton*, 1 Ves. & B. 334; *Morgan v. Fillmore*, 18 Abb. Pr. 217; *United States v. Vietor*, 16 Abb. Pr. 153; *Mount Holly etc. Co. v. Ferree*, 17 N. J. Eq. 117; *Dewey v. White*, 65 N. C. 225; *Hatfield v. McWhorter*, 40 Ga. 269; *Tyus v. Rust*, 37 Ga. 574; 95 Am. Dec. 365. If the liability has been occasioned by some act of the plaintiff himself, he is not entitled to the remedy: See *Desborough v. Harris*, 5 De Gex, M. & G. 439, 455; *Cochrane v. O'Brien*, 2 Jones & L. 380; [*Conley v. Ala. Gold Life Ins. Co.*, 67 Ala. 472.]

a claim of title adverse and paramount to that of the bailor, principal, or landlord, a suit of interpleader cannot, in general, be maintained against the two conflicting claimants, since, from the very nature of the relation, there is an independent personal liability, with respect to the subject-matter, of the bailee to his bailor, of the agent to his principal, and of the tenant to his landlord.¹

§ 1327. **By Bailees, Agents, Tenants, and Parties to Contracts.**—The general doctrine which determines the rights of bailees, agents, tenants, and contracting parties to interplead their principals, bailors, landlords, and the like, and claimants who assert antagonistic paramount titles, has been stated in the preceding paragraph.² The

¹ For cases illustrating this conclusion, see the next following paragraph and notes thereunder. Since the cases of bailees, agents, and tenants are so important, and since the chief difficulties connected with the remedy of interpleader have arisen in its application to such persons, I have given a separate paragraph to the examination of these relations.

² I have collected and arranged in this note some of the most important cases which deal with such classes of persons.

Bailees and agents.—A bailee or agent cannot maintain an interpleader suit against the bailor or the principal and a third person who asserts an independent, antagonistic, and paramount title to the fund; *Nickolson v. Knowles*, 5 Madd. 47; *Dixon v. Hamond*, 2 Barn. & Ald. 310, 313; *Cooper v. De Tastet*, Tam. 177, 181, 182; *Smith v. Hammond*, 6 Sim. 10; *Pearson v. Cardon*, 2 Russ. & M. 606, 609, 610, 612; *Crawshaw v. Thornton*, 2 Mylne & C. 1, 19-24; *Cook v. Earl of Rosslyn*, 1 Giff. 167; *Atkinson v. Manks*, 1 Cow. 691, 703-706; *United States Trust Co. v. Wiley*, 41 Barb. 477; *Lund v. Seamen's Bank*, 37 Barb. 129; *United States v. Vietor*, 16 Abb. Pr. 153; *Vosburgh v. Huntington*, 15 App. Pr. 254; *First Nat. Bank v. Bininger*, 26 N. J. Eq. 345; *Tyus v. Rust*, 37 Ga. 574; 95 Am. Dec. 365; *Hatfield v. McWhorter*, 40 Ga. 269; *Crane v. Burntrager*, 1 Ind. 165; *White Water*

etc. Co. v. Comegys, 2 Ind. 469; [Bartlett v. The Sultan, 23 Fed. Rep. 257-De Zouche v. Garrison, 140 Pa. St. 430.] Nor can an attorney maintain such a suit against his client and a third person who claims the money which he has collected, by an independent and antagonistic title: *Marvin v. Ellwood*, 11 Paige, 365; but see, *per contra*, *Goddard v. Leech*, Wright, 476. For the same reason, where A claims as legatee under a will, and B claims the property by a title paramount to that of the testator, the executor cannot compel them to interplead; he is under a direct liability to the legatee: *Adams v. Dixon*, 19 Ga. 513; 65 Am. Dec. 608. On the other hand, there are cases in which a bailee or an agent may interplead his bailor or his principal with third persons claiming adversely. Wherever the third person claims the thing, fund, debt, or duty from the bailee or agent under a title *derived from* the bailor or the principal, created by the latter's own act subsequently to the bailment or agency,—such as his assignment, agreement, sale, mortgage, trust, or lien given by him,—the bailee or agent may compel the parties to interplead. There is in such a case no denial of the original title; the only dispute is concerning the effect of the subsequent act, and as to which of the claimants is thereby entitled to the thing or fund. On this general ground an attorney may interplead his client and a person who sets up a derivative

rule is not, however, of universal application. There are cases in which a bailee, agent, or tenant may interplead

claim from such client: *Gibson v. Goldthwaite*, 7 Ala. 281; 42 Am. Dec. 592. And where money is in the hands of an agent, and the principal has created a lien or charge on the fund, in favor of a third person, in respect to which a controversy has arisen, the agent may compel his principal and the other claimant to interplead: *Smith v. Hammond*, 6 Sim. 10; *Wright v. Ward*, 4 Russ. 215-220. And where the principal has assigned the fund in the agent's hands, or the bailor has transferred his interest in the thing bailed: *Crawford v. Fisher*, 1 Hare, 436, 440; *Smith v. Hammond*; *Wright v. Ward*; *Tanner v. European Bank*, L. R. 1 Ex. 261; *Gibson v. Goldthwaite*. For a like reason an interpleader is permitted where a bailor or principal has given orders for the property to two different persons who set up conflicting claims, since their titles are derivative, and not antagonistic: *Pearson v. Cardon*, 2 Russ. & M. 606; 4 Sim. 218; *Atkinson v. Manks*, 1 Cow. 691. The decision in *Schuyler v. Pelissier*, 3 Edw. Ch. 191, goes too far. An interpleader by the bailee is also allowed where a joint bailment has been made, or a transaction in the nature of a joint bailment, to await the happening of some event or the determination of some dispute: *Suart v. Welch*, 4 Mylne & C. 305; *City Bank v. Skelton*, 2 Blatchf. 14; *First Nat. Bank v. West River R. R.*, 46 Vt. 633; *Perkins v. Trippe*, 40 Ga. 225. For special cases, see *Mason v. Hamilton*, 5 Sim. 19; *Crellin v. Leyland*, 6 Jur. 733. It should be remembered that in all such cases if the bailee or agent has recognized the title of the assignee or other holder of a derivative title, and has stipulated to hold the property at his disposal, the independent liability thus assumed will prevent the bailee or agent from compelling the assignee to interplead with the bailor or principal who repudiates the transaction: See *ante*, § 1326; *Tyus v. Rust*, 37 Ga. 574; 95 Am. Dec. 365; *Hatfield v. McWhorter*, 40 Ga. 269.

Tenant and landlord. — The general doctrine is familiar, that a tenant cannot deny his landlord's title; he cannot therefore maintain a suit for inter-

pleader against his landlord and a stranger who claims under a title antagonistic and paramount to that of the lessor: *Dungey v. Angove*, 2 Ves. 304, 310; *Woolaston v. Wright*, 3 Anstr. 801; *Smith v. Target*, 2 Anstr. 529; *Johnson v. Atkinson*, 3 Anstr. 798; *Cook v. Earl of Rosslyn*, 1 Giff. 137; *Crawshay v. Thornton*, *supra*; *Seaman v. Wright*, 12 Abb. Pr. 304; *Crane v. Burntrager*, 1 Ind. 165; *Snodgrass v. Butler*, 54 Miss. 45. But the tenant is entitled to interplead his landlord and an opposing claimant whenever there is some privity between the two, — when the title of the other claimant is derivative from that of the lessor, — as, for example, when the relation of mortgagor and mortgagee, trustee and *cestui que trust*, assignor and assignee, etc., has been created between the two. In such a case the tenant does not dispute his landlord's title: *Dungey v. Angove*, 2 Ves. 304, 310, 312; *Metcalf v. Hervey*, 1 Ves. Sr. 248; *Cowtan v. Williams*, 9 Ves. 107; *Clarke v. Byne*, 13 Ves. 383; *Johnson v. Atkinson*, 3 Anstr. 798; *Seaman v. Wright*, 12 Abb. Pr. 304; *Snodgrass v. Butler*, 54 Miss. 45; *Oil Run Petro. Co. v. Gale*, 6 W. Va. 525; [*Ketcham v. Brazil Block Coal Co.*, 88 Ind. 515.] Or where both contestants claim under the lessor by different titles; for example, one as heir and the other as devisee: *Jew v. Wood*, 3 Beav. 579; *Badeau v. Tylee*, 1 Sand. Ch. 270.

Parties to contracts. — As a general rule, where A and B are bound by express contract, A cannot maintain an interpleader suit against B or a person holding or claiming under him, and a stranger who asserts and claims under an antagonistic and paramount title. A is under an independent liability to B: *Ante*, § 1326. For example, a vendee of real or personal property, with respect to his liability to pay the purchase price, cannot interplead his vendor and a third person claiming to own the property by an independent antagonistic title: *James v. Pritchard*, 7 Mees. & W. 216; *Trigg v. Hitz*, 17 Abb. Pr. 436; *Shehan's Heirs v. Barnett's Heirs*, 6 Mon. 592. On the other hand, as in cases of

his bailor, principal, or landlord, and a third person setting up an opposing claim to the thing, fund, or duty. These cases may be described by one general formula, as those in which the title of the opposing claimant is *derivative* under, and not antagonistic and paramount to, that of the bailor, principal, or landlord. An interpleader is

bailees, agents, and tenants, a party to a contract may interplead his co-contractor and other persons in privity with him, or distinct claimants all of whom are in privity with his co-contractor, — that is, may interplead his co-contractor and persons who derive their title under him, or several claimants all of whom thus hold by derivative title: [Bechtel v. Sheaffer, 117 Pa. St. 555, 562.] As example: A vendee may interplead his vendor and an attaching creditor of A, alleged to be the real owner, the sale being alleged to have been really made by the vendor as A's agent: Richards v. Salter, 6 Johns. Ch. 445; Johnston v. Lewis, 4 Abb. Pr., N. S., 150. [One owing a sum of money under a contract may interplead the legal assignee of his co-contractor, and one claiming the fund either by equitable assignment from the co-contractor or by attachment levied upon the fund: Crane v. McDonald, 118 N. Y. 648.] A vendor of land may interplead the husband of the deceased vendee and her heirs, where both claimed to be entitled to a conveyance: Farley v. Blood, 30 N. H. 354. Insurance companies may compel opposing claimants of the insurance money to interplead when they claim by assignment from the assured, or by mortgage, or by attachment, etc., — that is, when they claim *derivatively*: Nelson v. Barter, 2 Hem. & M. 334; Hamilton v. Marks, 5 De Gex & S. 638; Spring v. S. C. Ins. Co., 8 Wheat. 268. On like ground, corporations may interplead opposing claimants of stock or dividends, whose titles are derivative from a stockholder, by assignment, execution, attachment, trust, etc.: Salisbury Mills v. Townsend, 109 Mass. 115; Providence Bank v. Wilkinson, 4 R. I. 507; 70 Am. Dec. 160; Cady v. Potter, 55 Barb. 463. See Cheever v. Hodgson, 9 Mo. App. 565. A maker of a note may compel claimants holding under the payee by

derivative title to interplead; for example, an attaching creditor of payee and an assignee: Briant v. Reed, 14 N. J. Eq. 271; Bryan v. Saltentall, 3 J. J. Marsh. 672; Fahie v. Lindsay, 8 Or. 474. The administrator of a deceased guardian to whom the note was made payable, and a new guardian appointed in place of the one deceased: Van Buskirk v. Roy, 8 How. Pr. 425. A receiver has been held entitled to interplead opposing claimants of the fund in his hands: Winfield v. Bacon, 24 Barb. 154. (*Quære*, would not the court direct the proper distribution of the fund by the receiver?) Where suits by persons claiming to be owners of the cargo are instituted in admiralty against a ship, causing her arrest, the master cannot maintain interpleader against these claimants, because, — 1. The claims are not against him, but against the ship; and 2. The court of admiralty has full jurisdiction to settle all the questions: Sablich v. Russell, L. R. 2 Eq. 441. Independently of statute, it has generally been held that a sheriff levying on goods by execution against A, which are claimed by B to be his property, cannot compel the execution creditor and B to interplead: Slingsby v. Boulton, 1 Ves. & B. 334; Shaw v. Coster, 8 Paige, 339; 35 Am. Dec. 690; Quinn v. Green, 1 Ired. Eq. 229; 36 Am. Dec. 46; Quinn v. Patton, 2 Ired. Eq. 48; Dewey v. White, 65 N. C. 225. Nor can the sheriff compel the opposing claimants of a surplus in his hands after satisfying an execution to interplead; such claims can be adjusted by the court: Parker v. Barker, 42 N. H. 78; 77 Am. Dec. 789; McDonald v. Allen, 37 Wis. 108; 19 Am. Rep. 754. But see Kring v. Green's Ex'rs, 10 Mo. 195; Lawson v. Jordan, 19 Ark. 297; 70 Am. Dec. 596. Statutes in England and in many of the states have authorized the sheriff to interplead the claimants of property seized by him under process.

allowed wherever the adverse claim originates from some act of the bailor, principal, or landlord, done or suffered after the commencement of the bailment, agency, or tenancy, and causing a dispute as to which of the parties is entitled to the thing, fund, or duty. The claim of the third person, instead of being under an independent, antagonistic, paramount title, must be made under a title *derived* from that of the bailor, principal, or landlord; it must acknowledge, and not deny, such original title.

§ 1328. **Pleadings and Other Procedure.**—The bill of complaint must contain allegations which show that all of the requisites entitling the plaintiff to the remedy exist in the case. It must allege positively that conflicting claims to substantially the same thing, fund, debt, or duty are set up by the defendants; that plaintiff claims no interest in the subject-matter; that he is indifferent between the claimants, and is ready and willing to deliver the thing or fund, or pay the debt, or render the duty to the rightful claimant, but that he is ignorant or in doubt which is the rightful one, and is in a real danger or hazard by means of such doubt, from their conflicting demands.¹ The bill need not show an apparent title in either of the defendants.² On the contrary, if the bill should show that plaintiff was fully informed of the defendants' rights and of his own liability, or if it should show that one of the defendants was certainly entitled, on the facts alleged, to the thing, debt, or duty, in either case it would be demurrable; there would be no ground for an interpleader.³ It is the settled practice that the

¹ Farley v. Blood, 30 N. H. 354; Parker v. Barker, 42 N. H. 78; 77 Am. Dec. 789; Atkinson v. Manks, 1 Cow. 691; Wilson v. Duncan, 11 Abb. Pr. 3; Lozier's Ex'rs v. Van Saun's Adm'rs, 3 N. J. Eq. 325; Briant v. Reed, 14 N. J. Eq. 271; Snodgrass v. Butler, 54 Miss. 45; Starling v. Brown, 7 Bush, 164; State Ins. Co. v. Gennett, 2 Tenn. Ch. 82; Pfister v. Wade, 56 Cal. 43; [Killian v. Ebbinghaus, 110 U. S. 568; Crane v. McDonald, 118

N. Y. 648, 654; Stone v. Reed, 152 Mass. 179.]

² East & W. Ind. Dock Co. v. Little-dale, 7 Hare, 57; Pfister v. Wade, *supra*.

³ Parker v. Barker, 42 N. H. 78; 77 Am. Dec. 789; Mohawk etc. R. R. v. Clute, 4 Paige, 384; Morgan v. Fillmore, 18 Abb. Pr. 217; Wilson v. Duncan, 11 Abb. Pr. 3; Briant v. Reed, 14 N. J. Eq. 271; Barker v. Swain, 4 Jones Eq. 220; [Bassett v.

bill of complaint must be accompanied by an affidavit of the plaintiff, stating that the suit is not brought in collusion with either of the defendants; and the omission of such affidavit may generally be taken advantage of by demurrer.¹ The plaintiff must also bring or pay, or offer to bring or pay, the entire thing, fund, or money in controversy into court; an omission to do so renders the bill demurrable.² If the bill was properly filed, and if the plaintiff has acted in good faith, he is generally entitled to his costs out of the fund in controversy, which costs, as between the defendants, must ultimately be paid by the unsuccessful party.³

Leslie, 123 N. Y. 396.] And if the plaintiff denies his liability to either of the defendants, he is not entitled to the remedy; he destroys the very foundation on which it rests: *McHenry v. Hazard*, 45 Barb. 657; 45 N. Y. 580 [*ante*, § 1325, note]. If the bill is taken as confessed by one of the conflicting defendants, the fund indisputably belongs to the other. And where in such a case a stranger was afterwards admitted by the lower court, on petition, to contest the interest of the remaining defendant, it was held on appeal that there was no practice allowing a third person thus to come into the cause by petition; that the bill could not be amended to reach him, as it was filed to guard against *known* claims; the order that the remaining defendant and the third person should interplead was irregular: *Michigan etc. Co. v. White*, 44 Mich. 25. (*Quære*, would such a proceeding be allowed under the provision of the Iowa and California codes permitting *Intervention*?)

¹ *Hamilton v. Marks*, 5 De Gex & S. 638; *Farley v. Blood*, 30 N. H. 354; *Atkinson v. Manks*, 1 Cow. 691; *Beck v. Stephani*, 9 How. Pr. 193; *Mount Holly etc. Co. v. Ferree*, 17 N. J. Eq. 117; *Tyus v. Rust*, 37 Ga. 574; 95 Am. Dec. 365; *Snodgrass v. Butler*, 54 Miss. 45; *Starling v. Brown*, 7 Bush, 164; *Biggs v. Kouns*, 7 Dana, 405, 411; [*Blue v. Watson*, 59 Miss. 619;] but a contrary practice seems to prevail in Connecticut; *Consociated Pres. Soc. v. Staples*, 23 Conn. 544, 555; *Nash v. Smith*, 6 Conn. 421. The plaintiff's affidavit is conclusive; defendants can-

not contradict it, even though the plaintiff has filed supplemental affidavits: *Manby v. Robinson*, L. R. 4 Ch. 347; *Langston v. Boylston*, 2 Ves. 101; *Stevenson v. Anderson*, 2 Ves. & B. 407; and see *Fahie v. Lindsay*, 8 Or. 474. If collusion appears on the face of the bill, relief will, of course, be denied: *Marvin v. Ellwood*, 11 Paige, 365; *Kerr v. Union Bank*, 18 Md. 396; *Williams v. Halbert*, 7 B. Mon. 184.

² The whole fund must be put at the disposal of the court; an offer to bring in what may be found due is not sufficient: *Mokawk etc. R. R. v. Clute*, 4 Paige, 384; *Atkinson v. Manks*, 1 Cow. 691; *Williams v. Walker*, 2 Rich. Eq. 291; 46 Am. Dec. 53; *Snodgrass v. Butler*, 54 Miss. 45; *McGarrah v. Prather*, 1 Blackf. 299; *Starling v. Brown*, 7 Bush, 164. [*Contra*, as to the omission being a ground for demurrer, *Blue v. Watson*, 59 Miss. 619.] It was held in *Farley v. Blood*, 30 N. H. 354, that in a suit concerning the defendants' rights to a conveyance under a land contract, the plaintiff must offer to convey, and must have the deeds executed ready for delivery.

³ See *Laing v. Zeden*, L. R. 9 Ch. 736; *Aldridge v. Thompson*, 2 Brown Ch. 149; *Farley v. Blood*, 30 N. H. 354; *Manchester Print Works v. Stimson*, 2 R. L. 415; *Atkinson v. Manks*, 1 Cow. 691; *Canfield v. Morgan*, Hopk. Ch. 224; *Aymer v. Gault*, 2 Paige, 284; *Badeau v. Rogers*, 2 Paige, 209; *Spring v. S. C. Ins. Co.*, 8 Wheat. 268. As in all equity suits, costs are within the discretion of the court, and depend somewhat upon the circumstances of each case.

§ 1329. **Interpleader in Legal Actions.**—In England and in many of the American states a summary mode of interpleader by motion and order in certain legal actions is authorized.¹ These statutes substantially provide that in actions specified the defendant may show by affidavit that the same thing or money is claimed by another person besides the plaintiff; that he has sued or threatens to sue; that defendant is not in collusion with him; and that defendant is ready and willing to bring the thing or money into court. The court on motion may order such claimant to be substituted as defendant in the action in place of the original defendant. It is universally held that these statutes do not at all limit nor affect the equitable jurisdiction by suit; they merely furnish another special, cumulative, and concurrent remedy. The ordinary type of these statutes does not alter the settled doctrines concerning interpleader. The statutory remedy is a mere substitute for the equitable remedy by suit, in the kinds of actions to which it applies, and is governed by the same rules.² Of course, the statutes may change the equi-

¹ The English statute of 1 & 2 Wm. IV., c. 58, sec. 1, allowed this proceeding in actions of assumpsit, debt, trover, and detinue. For the amendment made by the common-law procedure act of 1860, see *ante*, note under § 1324. The American statutes mainly differ with respect to the kinds of actions in which the proceeding is allowed. In a few states it is confined to actions on contract for money: *Alabama*: Code 1876, secs. 2906, 2907; or to actions for the recovery of personal property: *Arkansas*: Code 1874, secs. 4483, 4484; *Iowa*: 2 McClain's Stats. 1880, sec. 2572; *Oregon*: Gen. Laws 1872, p. 111, sec. 39. In several states the proceeding is allowed in actions on contract, and in those for the recovery of specific personal property: *California*: Code Civ. Proc., sec. 386 (for recent amendment, see *ante*, note under § 1324); *Idaho*: Gen. Laws 1880-81, sec. 201; *Kansas*: Dassel's Comp. Laws 1881, secs. 3564, 3565; *Nebraska*: Brown's Comp. Stats. 1881, pp. 535, 536, sec. 48; *Ohio*: 2 Rev. Stats. 1880, secs. 5016, 5017; *Missis-*

sippi: Rev. Code 1880, sec. 1578. In others it embraces actions on contract, and actions for the recovery of real or of personal property: *Dakota*: Rev. Codes 1877, p. 491, sec. 91; *Minnesota*: Stats. 1878, p. 725, sec. 131; *New York*: Code Civ. Proc. (new code), sec. 820; *North Carolina*: Battle's Rev. 1873, p. 156, sec. 65; *South Carolina*: Rev. Stats. 1873, p. 597, sec. 145. In two states it is authorized "in any action": *Virginia*: Code 1873, c. 149, p. 1019; *West Virginia*: 1 Kelly's Rev. Stats. 1879, c. 7, p. 238. In some other states a similar proceeding is authorized by statute in certain special cases: *Colorado*: King's Code Civ. Proc. 1880, p. 151, sec. 404.

² *Oriental Bank v. Nicholson*, 3 Jur., N. S., 857; *Slaney v. Sidney*, 14 Mees. & W. 800; *Tauton v. Groh*, 4 Abb. App. 358; *Vosburgh v. Huntington*, 15 Abb. Pr. 254; *Johnson v. Maxey*, 43 Ala. 521; *Nelson v. Goree's Adm'r*, 34 Ala. 565; *Starling v. Brown*, 7 Bush, 164; *Board of Education v. Scoville*, 13 Kan. 17; *Pfister v. Wade*, 56 Cal. 43.

table doctrines; may enlarge their scope of operation; and a few of them have doubtless produced this effect, as in the clauses introduced by amendment into the statutes of England and California, already noticed.¹

¹See *ante*, note under § 1324; *Tanner v. European Bank*, L. R. 1 Ex. 261; [*Wells, Fargo, & Co. v. Miner*, 25 Fed. Rep. 533.] As to actions under codes of procedure adopting the reformed procedure, see *Cady v. Potter*, 55 Barb. 463; *Washington etc. Ins. Co. v. Lawrence*, 28 How. Pr. 435; *St. Louis Life Ins. Co. v. Alliance Mut. L. Ins. Co.*, 23 Minn. 7; *Board of Education v. Scoville*, 13 Kan. 17; *Pfister v. Wade*, 56 Cal. 43. In volume 35 of

the *American Decisions*, pp. 695-712, the reader will find a very able, exhaustive, and instructive note to the case of *Shaw v. Coster*, which discusses many points of practice, and questions arising under the statutes, which I have not touched upon. I have availed myself of the assistance furnished by this note in preparing the foregoing chapter, especially in its exhaustive collection of cases.

CHAPTER SECOND.

RECEIVERS.

ANALYSIS.

- § 1330. Definition, general nature, and objects.
- § 1331. The appointment discretionary.
- §§ 1332-1335. Cases in which a receiver may be appointed.
- § 1332. First class.
- § 1333. Second class.
- § 1334. Third class.
- § 1335. Fourth class.
- § 1336. Their powers, rights, duties, and liabilities.

§ 1330. **General Nature and Objects.**—I purpose in this chapter to give a mere sketch of the general doctrines concerning this peculiar subject.¹ A receiver is a person standing indifferent between the parties, appointed by the court as a *quasi* officer or representative of the court, to hold, manage, control, and deal with the property which is the subject-matter of or involved in the controversy, under the direction of the court, during the continuance of the litigation, either where there is no person entitled competent to thus hold it, — as, for example, in the case of an infant, or in the interval before an executor or administrator of a deceased owner is appointed; or where two or more litigants are equally entitled, but it is not just and proper that either of them should retain it under his control, — as, for example, in some suits between partners; or where a person is legally entitled, but there is danger of his misapplying or misusing it, — as, for exam-

¹ The subject of receivers has come to be one of great importance, owing especially to its vastly increased application of late in the winding up of corporations both in England and in this country. The remedy is so peculiar, and the rules regulating it in all its phases and applications are so special, that my limits of time and

space will only permit a meager statement of its most general doctrines. The reader must be referred, for practical assistance in his professional work, to those treatises which deal with the subject in an exhaustive manner, of which Mr. Kerr's work is certainly one of the best.

ple, in some suits against an executor or administrator, or, under some particular circumstances, in suits for the enforcement of a mortgage; or he is appointed in like manner and under like circumstances for the purpose of carrying into effect a decree of the court concerning the property, — as, for example, a decree for the winding up and settlement of a corporation, or the decree in a creditor's suit.¹

§ 1331. **The Appointment Discretionary.** — The appointment of a receiver is, as a general rule, discretionary.² The discretion is not arbitrary or absolute; it is a sound and judicial discretion, taking into account all the circumstances of the case, exercised for the purpose of promoting the ends of justice, and of protecting the rights of *all* the parties interested in the controversy and the subject-matter, and based upon the fact that there is no other adequate remedy or means of accomplishing the desired objects of the judicial proceeding. One of the most material circumstances, without which the court would hardly make the appointment, is the reasonable probability that the plaintiff asking for a receiver will ultimately succeed in obtaining the general relief sought for by his suit.³

¹ Kerr on Receivers, 1, 2; Owen v. Homan, 3 Macn. & G. 378, 412; Bainbridge v. Baddeley, 3 Macn. & G. 413, 419; Sturch v. Young, 5 Beav. 557; Ladd v. Harvey, 21 N. H. 514; Cheever v. Rutland etc. R. R., 39 Vt. 653; Bank of Miss. v. Duncan, 52 Miss. 740; Battle v. Davis, 66 N. C. 252; Twitty v. Logan, 80 N. C. 69; Crowder v. Moone, 52 Ala. 220 (not until the bill is filed); Delaware etc. R. R. v. Erie R. R., 21 N. J. Eq. 298; Blondheim v. Moore, 11 Md. 365; Haight v. Burr, 19 Md. 130; Voshell v. Hynson, 26 Md. 83; Beverley v. Brooke, 4 Gratt. 187, 208; Hand v. Dexter, 41 Ga. 454; Reid v. Reid, 38 Ga. 24; Dougherty v. McDougald, 10 Ga. 121; Mapes v. Scott, 4 Ill. App. 268; Richards v. Barrett, 5 Ill. App. 510; Baker v. Backus's Adm'r, 32 Ill. 79; Mays v. Wherry, 3 Tenn. Ch. 34; Cassetty v. Capps, 3 Tenn. Ch. 524; French v.

Gifford, 30 Iowa, 148; Brown v. Home Sav. Bank, 5 Mo. App. 1; La Société Française v. District Court, 53 Cal. 495; Libby v. Rosekrans, 55 Barb. 202; Booth v. Clark, 17 How. 322, 331; Crane v. McCoy, 1 Bond, 422; Whelpley v. Erie R'y, 6 Blatchf. 271; Wilmer v. Atlanta etc. R'y, 2 Woods, 409.

² The discretion is not so absolute that it may not be reviewed, and its exercise, if improper, reversed: La Société Française v. Dist. Court, 53 Cal. 495; Milwankie etc. R. R. v. Soutter, 2 Wall. 521.

³ In Owen v. Homan, 3 Macn. & G. 378, 412, affirmed 4 H. L. Cas. 997, the court said: "It is unnecessary to do more than to state that the granting a receiver is a matter of discretion to be governed by a view of the whole circumstances of the case; one most material of which circumstances is the probability of the plaintiff being ulti-

§ 1332. Cases in Which a Receiver may be Appointed.

—As stated in a previous paragraph, the cases in which a receiver may be appointed, subject to the general rules regulating the exercise of the judicial discretion, may be reduced to four general classes. The first class contains those cases where there is no person entitled to the property who is at the same time competent to hold and manage it during the judicial proceeding. In instances of this class a receiver is appointed more readily and without proof of imminent danger, perhaps, than in any other. It includes,—1. Infants' estates.¹ A court of equity exercises control over the property of its infant ward, where there is no trustee, by means of a receiver, even though there is a guardian. 2. Lunatics' estates. The control of the court over the property of a lunatic is ordinarily exercised by means of a committee; but instead of a committee, and especially where no person will act as a com-

mately entitled to a decree." In *Bainbridge v. Baddeley*, 3 Macn. & G. 413, 419, the court, speaking of the general grounds for the appointment of a receiver, said: "There are, I apprehend, two grounds, and two only: 1. That there is a reasonable probability of success on the part of the plaintiff; and 2. That the property, the subject of the suit, is in danger." In *Blondheim v. Moore*, 11 Md. 365, the following rules controlling the exercise of the discretion were laid down, which have been frequently quoted as a correct generalization: "1. That the power of appointment is a delicate one, and is to be exercised with great circumspection; 2. That it must appear the claimant has a title to the property, and the court must be satisfied by affidavit that a receiver is necessary to preserve the property; 3. That there is no case in which the court appoints a receiver merely because the measure can do no harm; 4. That fraud or imminent danger, if the intermediate possession should not be taken by the court, must be clearly proved; and 5. That unless the necessity be of the most stringent character, the court will not appoint a receiver until the defendant is first heard in response to the application." These rules, however, must be taken

with some reservations; they are certainly too strong to be of universal application, especially the fourth. There are classes of cases in which a receiver is appointed almost as a matter of course, although no fraud nor *imminent* danger is proved. See, on the general matter of discretion, *Earl Talbot v. Hope* Scott, 4 Kay & J. 96; *Whitworth v. Whyddon*, 2 Macn. & G. 52, 55; *Evans v. Coventry*, 5 De Gex, M. & G. 911, 916, 917; *Skip v. Harwood*, 3 Atk. 564; *Battle v. Davis*, 66 N. C. 252; *Hand v. Dexter*, 41 Ga. 454; *Crawford v. Ross*, 39 Ga. 44; *Crane v. McCoy*, 1 Bond, 422; *Nichols v. Perry Pat. Arm Co.*, 11 N. J. Eq. 126; *Ladd v. Harvey*, 21 N. H. 514; *Orphan Asylum v. McCartee*, Hopk. Ch. 429; *Maynard v. Bailey*, 2 Nev. 313; *Bank of Miss. v. Duncan*, 52 Miss. 740.

¹ *Gardner v. Blane*, 1 Hare, 381; *Butler v. Freeman*, Amb. 301, 303; *Duke of Beaufort v. Berty*, 1 P. Wms. 703. The main reason for appointing a receiver, in the absence of a trustee, was that the guardian at common law had not full power of control and management. The necessity of a receiver in such cases may have been obviated in many states by statutes enlarging the powers of guardians.

mittee, the court may appoint a receiver.¹ 3. Estates of decedents. During the litigation concerning the admission of a will to probate, and during the interval before an executor or administrator is appointed, a court of equity has power to appoint a receiver of the personal property and of the rents and profits of the real estate, where there is any danger of their loss, misuse, or misapplication. The necessity of such a receiver has been greatly lessened by modern statutes authorizing the probate court to appoint an administrator *ad litem*, and enlarging his powers.²

§ 1333. **The Same. Second Class.**—The second class of cases is based upon the fact that all of the parties are equally entitled to the possession of the property which is the subject-matter of the controversy, but it is not just and proper, from the nature of the dispute and of their relations with each other, that either one of them should be allowed to retain possession and control during the litigation. While the foundation of the remedy is, of course, the danger, yet it is not always essential that there should be any element of actual fraud or breach of trust. The most important instances which do or may belong to

¹ See *ante*, § 1312, cases as to appointment of committees. A receiver will not be appointed after the death of a lunatic, during a controversy between persons claiming to be his heirs: *In re Ferrior*, L. R. 3 Ch. 175, 719. Where a suit was brought by the committee of a lunatic to set aside a conveyance of land alleged to have been obtained by defendant from the lunatic by fraud, undue influence, and defendant was in possession receiving the rents and profits, and was alleged to be insolvent, the appointment of a receiver of the property during the litigation was held proper: *Mitchell v. Barnes*, 22 Hun, 194.

² While this jurisdiction is well settled, the recent English decisions hold that it will not be exercised if the probate court has already appointed an administrator *ad litem*; but if no such temporary administrator has been appointed, the court of equity will

still appoint a receiver: *Whitworth v. Whyddon*, 2 Macn. & G. 52, 55; *King v. King*, 6 Ves. 172; *Richards v. Chave*, 12 Ves. 462; *Edmunds v. Bird*, 1 Ves. & B. 542; *Atkinson v. Henshaw*, 2 Ves. & B. 85; *Ball v. Oliver*, 2 Ves. & B. 96; *Rutherford v. Douglas*, 1 Sim. & St. 111, note; *Watkins v. Brent*, 1 Mylne & C. 97, 102; *Devey v. Thornton*, 9 Hare, 222, 229; *Anderson v. Guichard*, 9 Hare, 275; *Rendall v. Rendall*, 1 Hare, 152; *Jones v. Goodrich*, 10 Sim. 327; *Reed v. Harris*, 7 Sim. 639; *Wood v. Hitchings*, 2 Beav. 289; *Veret v. Duprez*, L. R. 6 Eq. 329; *Hitchen v. Birks*, L. R. 10 Eq. 471; *Parkin v. Seddons*, L. R. 16 Eq. 34; *Tewart v. Lawson*, L. R. 18 Eq. 490; *Flagler v. Blunt*, 32 N. J. Eq. 518; *Osborn v. United States Bank*, 9 Wheat. 738; *Schlecht's Appeal*, 60 Pa. St. 172; *Rachel Colvin's Case*, 3 Md. Ch. 278.

this class are: 1. Suits between partners.¹ In suits for a dissolution or winding up of a partnership, and even in some very special cases without a dissolution, the court may appoint a receiver of the firm assets, when there is any misconduct on the part of the defendants, and even, perhaps, where the partners themselves are wholly unable to agree as to the management of the property and the settlement of the partnership affairs. The jurisdiction is, however, always exercised with great carefulness and caution. 2. In suits for partition between co-owners.² In suits between co-owners of mines and collieries the English courts grant a receiver upon the same grounds and under

¹ My limits do not permit a discussion of the particular circumstances under which a receiver will or will not be appointed; the cases cited furnish many illustrations. In general, a dissolution must have occurred, or must be asked; although in extreme cases of misconduct and danger therefrom, an *ad interim* receiver may be appointed without a dissolution. A disagreement among the partners themselves is essential: Hall v. Hall, 3 Macn. & G. 79; Fairburn v. Pearson, 2 Macn. & G. 144; Clegg v. Fishwick, 1 Macn. & G. 294 (after death of a partner); Roberts v. Eberhardt, Kay, 148; Sheppard v. Oxenford, 1 Kay & J. 491; Evans v. Coventry, 5 De Gex, M. & G. 911; Butchart v. Dresser, 4 De Gex, M. & G. 542; Smith v. Jeyes, 4 Beav. 503; Blakeney v. Dufaur, 15 Beav. 40; Hale v. Hale, 4 Beav. 369; Waters v. Taylor, 15 Ves. 10; Goodman v. Whitecomb, 1 Jacob & W. 589; Const v. Harris, Turn. & R. 496; Bard v. Bingham, 54 Ala. 463; Anderson v. Powell, 44 Iowa, 20; Law v. Ford, 2 Paige, 310; Marten v. Van Schaick, 4 Paige, 479; Garretson v. Weaver, 3 Edw. Ch. 385; Smith v. Lowe, 1 Edw. Ch. 33; Gregory v. Gregory, 1 Sweeny, 613; Sieghortner v. Weissenborn, 20 N. J. Eq. 172; Randall v. Morrell, 17 N. J. Eq. 343, 346; Renton v. Chaplain, 9 N. J. Eq. 62; Birdsall v. Colie, 10 N. J. Eq. 63; Cox v. Peters, 13 N. J. Eq. 39; Wolbert v. Harris, 7 N. J. Eq. 605; Sloan v. Moore, 37 Pa. St. 217; Holden's Adm'rs v. McMakin, 1 Pars. Cas. 270; Whitman v. Robin-

son, 21 Md. 30; Walker v. House, 4 Md. Ch. 39; Drury v. Roberts, 2 Md. Ch. 157; Williamson v. Wilson, 1 Bland, 418; Speights v. Peters, 9 Gill, 472; Roys v. Vilas, 18 Wis. 169; Allen v. Hill, 16 Cal. 113; Todd v. Rich, 2 Tenn. Ch. 107; [Hefebower v. Buck, 64 Md. 15; Simon v. Schloss, 48 Mich. 233; Perrin v. Lepper, 56 Mich. 351.]

² Mines and collieries. The working of a mine or colliery by co-owners is necessarily a business analogous to a partnership: Adams's Equity, 247, 354; Roberts v. Eberhardt, Kay, 148; Crawshay v. Maule, 1 Swanst. 405, 518, 523; Jefferys v. Smith, 1 Jacob & W. 298; Fereday v. Wightwick, 1 Russ. & M. 45; Bentley v. Bates, 4 Younge & C. 182; Vice v. Thomas, 4 Younge & C. 538. Partition between ordinary co-owners: Tyson v. Fairclough, 2 Sim. & St. 142; Evelyn v. Evelyn, 2 Dick. 800; Street v. Anderton, 4 Brown Ch. 414; Milbank v. Revett, 2 Mer. 405; Porter v. Lopes, L. R. 7 Ch. Div. 358 (Sir George Jessel spoke of the jurisdiction as enlarged by statute); Darcin v. Wells, 61 How. Pr. 259; Cassetty v. Capps, 3 Tenn. Ch. 524; Williams v. Jenkins, 11 Ga. 595; Brenan v. Preston, 2 De Gex, M. & G. 813 (a receiver appointed in a suit concerning title to machinery between part owners of a ship); [Pierce v. Pierce, 55 Mich. 629; Baughman v. Reed, 75 Cal. 319; 7 Am. St. Rep. 170 (to take charge of growing crop).]

the same circumstances as in those between partners; but in all ordinary cases of partition between legal co-owners of land, a receiver is not generally appointed unless some of the parties are in sole possession, to the exclusion of the others. 3. In suits between conflicting claimants of land, especially between parties claiming under legal titles, a receiver will not ordinarily be appointed. The remedy, however, may be granted under special circumstances, in cases of gross fraud, or great danger, or where possession is maintained by violence, and the like. In such cases the court acts with great caution, only where the plaintiff's rights are reasonably certain, and the danger is apparent.¹

§ 1334. **The Same. Third Class.**—The third class embraces those cases in which the person holding title to the property is in a position of trust or of *quasi* trust, and is violating his fiduciary duties by misusing, misapplying, or wasting the property, and is thereby endangering the rights of other persons beneficially interested. In many, but not in all, the instances falling within this class, the plaintiff has, and is seeking to enforce, some equitable estate or interest; but whatever be the nature of his right, the ground of the remedy is always the misconduct of the party holding the title, and the consequent danger of loss. Among the more important instances of this class in which a receiver may be appointed are the following: 1. Suits against trustees who have been guilty of a breach of trust;² 2. Suits under like circumstances

¹ Huguenin v. Baseley, 13 Ves. 105; Stilwell v. Wilkins, Jacob, 280; Clark v. Dew, 1 Russ. & M. 103; Jones v. Goodrich, 10 Sim. 327; Tol-dervy v. Colt, 1 Younge & C. 621; Earl Talbot v. Hope Scott, 4 Kay & J. 96; Hlawacek v. Bohman, 51 Wis. 92; Davis v. Reaves, 2 Lea, 649; Johnson v. Tucker, 2 Tenn. Ch. 398; Mays v. Wherry, 3 Tenn. Ch. 34; Mapes v. Scott, 4 Ill. App. 268; Rollins v. Henry, 77 N. C. 467; Battle v. Davis, 66 N. C. 252; Twitty v. Logan, 80 N. C. 69; Chappell v. Boyd, 56 Ga. 578; Williams v. Jenkins, 11 Ga. 595;

Jones v. Dougherty, 10 Ga. 273; Guernsey v. Powers, 9 Hun, 78.

² Courts will not interfere with trustees' possession by a receiver unless there is real danger from their misconduct: Evans v. Coventry, 5 De Gex, M. & G. 911, 916; Middleton v. Dodswell, 13 Ves. 266, 268; Browell v. Reed, 1 Hare, 434; Bainbrigge v. Blair, 3 Beav. 421; Skinners' Co. v. Irish Soc., 1 Mylne & C. 162; Richards v. Barrett, 5 Ill. App. 510; Bowling v. Scales, 2 Tenn. Ch. 63; Vose v. Reed, 1 Woods, 647; [Cohen v. Morris, 70 Ga. 313.]

against executors or administrators;¹ 3. Suits to enforce a mortgage when the security is inadequate, the mortgagor is insolvent, or is committing acts of waste, and the like, depreciating the value of the property;² 4. Suits, under like circumstances, to enforce equitable liens, including those by judgment creditors in the nature of an equitable execution;³ 5. Suits, under like circumstances, and for a like reason, by a vendor to enforce the specific performance of a contract for the sale of land against a vendee who is in possession;⁴ 6. In suits by creditors,

¹ In administration suits a receiver will not be appointed unless the executor or administrator has been guilty of misconduct, waste, misuse of assets, and the like, and there is real danger of loss: *Ibid.*; Anonymous, 12 Ves. 4; *In re Hopkins*, L. R. 19 Ch. Div. 61; *Nothard v. Proctor*, L. R. 1 Ch. Div. 4; *Randle v. Carter*, 62 Ala. 95; *Briarfield Iron Works Co. v. Foster*, 54 Ala. 622; *Du Val v. Marshall*, 30 Ark. 230; *Powell v. Quinn*, 49 Ga. 523; *Hoge v. Hollister*, 8 Baxt. 533; *Haines v. Carpenter*, 1 Woods, 262; *Beverley v. Brooke*, 4 Gratt. 187; *Leddel's Ex'r v. Starr*, 19 N. J. Eq. 163; [*Hill v. Arnold*, 79 Ga. 367.]

² In England an equitable mortgagee alone is entitled to a receiver, because a legal mortgagee can at any time gain possession, and thus secure the rents and profits: *Berney v. Sewell*, 1 Jacob & W. 647; *Brooks v. Greathed*, 1 Jacob & W. 176; *Reid v. Middleton*, Turn. & R. 455; *Truman v. Redgrave*, L. R. 18 Ch. Div. 547; *Peek v. Trinsmaran Iron Co.*, L. R. 2 Ch. Div. 115; *Pease v. Fletcher*, L. R. 1 Ch. Div. 273; *Lord Crewe v. Edleston*, 1 De Gex & J. 93 (mortgage of tolls). A receiver may also be appointed in suits to determine the priorities among several equitable mortgages or liens: *Davis v. Duke of Marlborough*, 2 Swanst. 108; *Angel v. Smith*, 9 Ves. 335; *Pritchard v. Fleetwood*, 1 Mer. 54; *Smith v. Earl of Effingham*, 2 Beav. 232; *Brooks v. Greathed*, *supra*; *Cortleyeu v. Hathaway*, 11 N. J. Eq. 39; 64 Am. Dec. 478. In this country no distinction is made between legal and equitable mortgages. The ground of appointing a receiver is the smallness of the security, and the danger lest it should be rendered more

inadequate by the conduct of the mortgagor: *Price v. Dowdy*, 34 Ark. 285; *Haas v. Chicago Build. Soc.*, 89 Ill. 498; *Des Moines Gas. Co. v. West*, 44 Iowa, 23; *Worrill v. Coker*, 56 Ga. 666; *Phillips v. Eiland*, 52 Miss. 721; *Brasted v. Sutton*, 30 N. J. Eq. 462; *Mahon v. Crothers*, 28 N. J. Eq. 567; *Johnson v. Tucker*, 2 Tenn. Ch. 393; *Williams v. Noland*, 2 Tenn. Ch. 151 (of personal property); *Moran v. Johnston*, 26 Gratt. 108; *Phoenix Mut. L. Ins. Co. v. Grant*, 3 McAr. 220; *Pullan v. Cincinnati etc. R. R.*, 4 Biss. 33; [*Wyckoff v. Scofield*, 98 N. Y. 475; *Storm v. Ermantrout*, 89 Ind. 214; *Lowell v. Doe*, 44 Minn. 144; *Hollenbeck v. Donnell*, 94 N. Y. 342;] for cases of receivers over corporations in suits for the enforcement of a deed of trust in the nature of a mortgage, see *Allen v. Dallas etc. R. R.*, 3 Woods, 316; *Warner v. Rising etc. Iron Co.*, 3 Woods, 514; *Wilmer v. Atlantic etc. R'y*, 2 Woods, 409.

³ Lien by deposit of title deeds: See *Adams's Equity*, 125. Suit by a holder of debentures secured by lien on assets of the corporation: *Hopkins v. Worcester etc. Canal Prop'rs*, L. R. 6 Eq. 437. Creditors' suits: *Gage v. Smith*, 79 Ill. 219; *Kuhl v. Martin*, 26 N. J. Eq. 60; *Osborn v. Heyer*, 2 Paige, 342; *Anglo-Italian Bank v. Davies*, L. R. 9 Ch. Div. 275, and cases cited; [*Davis v. Chapman*, 83 Va. 67; 5 Am. St. Rep. 251; *Weis v. Goetter*, 72 Ala. 259; *Micou v. Moses*, 72 Ala. 439; *Thompson v. Tower Mfg. Co.*, 87 Ala. 733; *Dollins v. Lindsey*, 89 Ala. 217; *Towne v. Campbell*, 35 Minn. 231; *Habenicht v. Lissak*, 78 Cal. 351; 12 Am. St. Rep. 63.]

⁴ A receiver pending the suit is appointed only when the land is a

although not strictly creditors' actions by judgment creditors, brought to enforce their demands from the debtors' property, under some very special circumstances involving great danger of loss, such as the debtors' non-residence, insolvency, and the like;¹ 7. Suits for the rescission of a contract for the sale of land under special circumstances;² 8. Suits to enforce payment of the arrears of annuities;³ 9. Suits for the protection of remaindermen against the life tenant or other holder of the particular estate;⁴ 10. Suits, under many circumstances, against corporations;⁵ 11. Suits and proceedings in bankruptcy.⁶

doubtful or inadequate security, and the vendee is insolvent, or committing waste, etc.: *Hall v. Jenkinson*, 2 Ves. & B. 125; *Boehm v. Wood*, 2 Jacob & W. 236; *Shakel v. Duke of Marlborough*, 4 Madd. 463; *Taylor v. Eckersley*, L. R. 2 Ch. Div. 302 (contract concerning chattels); *Phillips v. Eiland*, 52 Miss. 721; *Hughes v. Hatchett*, 55 Ala. 631; *Tufts v. Little*, 56 Ga. 139; *Gunby v. Thompson*, 56 Ga. 316. In a suit to enforce a grantor's or vendor's lien, a receiver will not generally be appointed before a decree, but may be after the decree: *Latimer v. Aylesbury etc. R'y*, L. R. 9 Ch. Div. 385; *Munns v. Isle of Wight R'y*, L. R. 5 Ch. 414; *Pell v. Northampton etc. R'y*, L. R. 2 Ch. 100.

¹ The case must undoubtedly be very special, to warrant the appointment of a receiver in a suit by a simple creditor: *Johnson v. Farnum*, 56 Ga. 144; *Ballin v. Ferst*, 55 Ga. 546; *Gregory v. Gregory*, 1 Jones & S. 1.

² *Gibbs v. David*, L. R. 20 Eq. 373.

³ In England only when the payment cannot be enforced by distress: *Sollory v. Leaver*, L. R. 9 Eq. 22; *Buxton v. Monkhouse, Coop.* 41; *Probasco v. Probasco*, 30 N. J. Eq. 108.

⁴ *In re Fowler*, L. R. 16 Ch. Div. 723.

⁵ The following cases will illustrate many of the circumstances under which a receiver may be appointed over corporations or corporate property: *Featherstone v. Cooke*, L. R. 16 Eq. 298; *Hopkins v. Worcester etc. Canal Prop'rs*, L. R. 6 Eq. 437; *Allen*

v. Dallas etc. R. R., 3 Woods, 316; *Warner v. Rising etc. Iron Co.*, 3 Woods, 514; *Wilmer v. Atlanta etc. R'y*, 2 Woods, 409; *North Car. etc. R. R. v. Drew*, 3 Woods, 691; *Union Tr. Co. v. St. Louis etc. R. R.*, 4 Dill. 114; *Kennedy v. St. Paul etc. R. R.*, 2 Dill. 448; *Whelpley v. Erie R'y*, 6 Blatchf. 271; *Bank of Bethel v. Pahquioque Bank*, 14 Wall. 383; *National Tr. Co. v. Miller*, 33 N. J. Eq. 155; *Freeholders of Middlesex v. State Bank*, 28 N. J. Eq. 166; *McCullough v. Merch. Loan etc. Co.*, 29 N. J. Eq. 217; *In re Long Branch etc. R. R.*, 24 N. J. Eq. 398; *Delaware etc. R. R. v. Erie R. R.*, 21 N. J. Eq. 298; *La Société Française v. District Court*, 53 Cal. 495; *Kelly v. Alabama etc. R. R.*, 58 Ala. 489; *Wilson v. Barney*, 5 Hun, 257; *Redmond v. Enfield Mfg. Co.*, 13 Abb. Pr., N. S., 332; *Rochester v. Bronson*, 41 How. Pr. 78; *Brown v. Home Sav. Bank*, 5 Mo. App. 1; *Vermont etc. R. R. v. Vt. etc. R. R.*, 50 Vt. 500; *Port Huron etc. R'y v. Judge of St. Clair Circuit*, 31 Mich. 456; *French v. Gifford*, 30 Iowa, 148; *Hand v. Dexter*, 41 Ga. 454; *People v. Security Ins. Co.*, 78 N. Y. 114; 34 Am. Rep. 522; 79 N. Y. 267; [*Have-meyer v. Superior Court*, 84 Cal. 327; 8 Am. St. Rep. 192; *Lawrence Iron Works Co. v. Rockbridge Co.*, 47 Fed. Rep. 755; *Belmont Nail Co. v. Cal. Iron and Steel Co.*, 46 Fed. Rep. 8.]

⁶ *Salt v. Cooper*, L. R. 16 Ch. Div. 544; *Ex parte Browne*, L. R. 16 Ch. Div. 497; *In re Manchester etc. R'y*, L. R. 14 Ch. Div. 645; *Ex parte Rylands*, L. R. 6 Ch. Div. 57; *Taylor v. Eckersley*, L. R. 5 Ch. Div. 740; *Boyle v.*

§ 1335. **The Same. Fourth Class.**—This class contains those cases in which a receiver is appointed after judgment for the purpose of carrying the decree into effect. In some instances the receiver appointed on motion pending the action is continued in his office after the decree; in others, he is appointed after the decree, when no appointment would be made before the final hearing. In all instances the object of a receiver is to carry into effect a special decree, which could not otherwise be efficiently executed by ordinary process. Among the most important cases in which a receiver may thus be appointed are creditors' suits and suits to enforce other equitable liens, suits to enforce the contracts of married women against their separate estates, and suits or proceedings generally statutory for the winding up of corporations.¹ In the states adopting the reformed procedure, the codes of procedure generally contain provisions regulating the appointment of receivers.²

§ 1336. **Powers, Rights, Duties, and Liabilities.**—The appointment of a receiver during the pendency of a suit does not determine any rights or title of the litigant parties; it is made for the benefit of all. His possession, though impartial while the controversy is undecided, is

Bettws etc. Co., L. R. 2 Ch. Div. 726; *In re H.'s Estate*, L. R. 1 Ch. Div. 276; *Munns v. Isle of Wight R'y*, L. R. 5 Ch. 414; *Riches v. Owen*, L. R. 3 Ch. 820; *In re Johnson*, L. R. 1 Ch. 325.

¹ Creditors' suits: See *post*, section on creditors' suits; *Anglo-Italian Bank v. Davies*, L. R. 9 Ch. Div. 275. On contracts of married women, see *ante*, section on married women's contracts: *Bryant v. Bull*, L. R. 10 Ch. Div. 153.

² These provisions are substantially alike in most of the codes; that of California may be taken as the type: *California*: Code Civ. Proc., sec. 564; *Arkansas*: Gantt's Dig. of Stats. 1874, secs. 4809, 4810; *Colorado*: King's Code Civ. Proc. 1880, sec. 138; *Dakota*: Hand's Code Civ. Proc. 1877, sec. 219; *Florida*: Code Civ. Proc. 1870, sec.

192; *Indiana*: 2 Davis's Rev. 1876, p. 114, sec. 199; *Iowa*: 2 Miller's Rev. Code 1880, sec. 2903; *Kansas*: Dassel's Comp. Laws 1881, p. 634, sec. 254; *Kentucky*: Bullitt's Code 1876, secs. 298, 299; *Minnesota*: Young's Stats. 1878, p. 739, sec. 207; *Missouri*: 1 Rev. Stats. 1879, secs. 3116, 3660; *Nebraska*: Brown's Comp. Stats. 1881, p. 565, sec. 266; *Nevada*: Comp. Laws 1873, p. 323, sec. 1207; *New York*: Code Civ. Proc., sec. 713; *North Carolina*: 1 Battle's Rev. 1873, p. 190, sec. 215; *Ohio*: 2 Rev. Stats. 1880, p. 1359, sec. 5587; *Oregon*: Gen. Laws 1872, p. 312, sec. 1029; *South Carolina*: Rev. Stats. 1873, p. 628, sec. 267; *Wisconsin*: Rev. Stats. 1878, p. 749, c. 126, sec. 2787. See also *Georgia*: Code 1882, p. 778, sec. 3098 (3043); p. 778, sec. 3149 (3092); *Texas*: Rev. Stats. 1879, p. 222, art. 1461.

regarded as on behalf of the one who is ultimately found to be entitled to the property.¹ He is in reality an officer

¹ While my limits do not permit any discussion in detail of the receiver's powers, rights, and liabilities, the following cases, which are generally classified, will furnish many illustrations: *Who may be appointed:* In re Lloyd, L. R. 12 Ch. Div. 447; Perry v. Oriental Hotels Co., L. R. 5 Ch. 420; Bennesson v. Bill, 62 Ill. 408. *When the appointment takes effect:* Edwards v. Edwards, L. R. 2 Ch. Div. 291 (not until security is given); Crowder v. Moore, 52 Ala. 220 (appointment before bill filed); Clark v. Brockway, 1 Abb. App. 351; Crane v. McCoy, 1 Bond, 422. *Effect of appointment:* Ex parte Evans, L. R. 13 Ch. Div. 252; Bolles v. Duff, 54 Barb. 215 (of consent to be a receiver). *Nature of receiver's office:* Jefferys v. Dickson, L. R. 1 Ch. 183; State v. Gambs, 68 Mo. 289 (is not a trustee of an express trust). *Interference with him, protection by the court:* Ex parte Cochrane, L. R. 20 Eq. 282; Russell v. East Anglian R'y, 3 Macn. & G. 104; Jordan v. Wells, 3 Woods, 527; Vermont etc. R. R. v. Vt. Cent. R. R., 46 Vt. 792. *Powers, rights, and authority in general:* In re Birmingham etc. R'y, L. R. 18 Ch. Div. 155; Campbell v. Compagnie Générale, L. R. 2 Ch. Div. 181; Ex parte Warren, L. R. 10 Ch. 222; Ex parte Jay, L. R. 9 Ch. 133; Armstrong v. Armstrong, L. R. 12 Eq. 614; Kennedy v. St. Paul etc. R. R., 5 Dill. 519; Stanton v. Ala. etc. R. R., 2 Woods, 506; Cowdery v. Railroad Co., 1 Woods, 331; Davis v. Gray, 16 Wall. 203; Heermans v. Clarkson, 64 N. Y. 171; Porter v. Williams, 9 N. Y. 142; 59 Am. Dec. 519; People v. Security Ins. Co., 78 N. Y. 114; 34 Am. Rep. 522; 79 N. Y. 267; Scott v. Elmore, 10 Hun, 68; Olcott v. Heermans, 3 Hun, 431; Simmons v. Wood, 45 How. Pr. 262; Elmira etc. Co. v. Erie R'y, 26 N. J. Eq. 284; Receivers v. Paterson Gas Light Co., 23 N. J. L. 283; Robinson v. Atlantic etc. R'y, 66 Pa. St. 160; Gibert v. Washington City etc. R. R., 33 Gratt. 586; Spinning v. Ohio etc. Tr. Co., 2 Disu. 336; Johnson v. Gunter, 6 Bush, 534; McCombs v. Merryhew, 40 Mich. 721; Newbold v. Peoria etc. R. R., 5 Ill. App. 367; Safford v. People, 85 Ill. 558; Tripp v.

Boardman, 49 Iowa, 410; Bank of Montreal v. Chicago etc. R. R., 48 Iowa, 518; McIlrath v. Snure, 22 Minn. 391; Barron v. Mullin, 21 Minn. 374; Meredith Sav. Bank v. Simpson, 22 Kan. 414; Moseby v. Burrow, 52 Tex. 396; Weems v. Lathrop, 42 Tex. 207. *Powers to bring, maintain, or continue suits:* Campbell v. Fish, 8 Daly, 162; Donnelly v. West, 17 Hun, 564 (limited divorce); Albany etc. Ins. Co. v. Van Vranken, 42 How. Pr. 281; Calkins v. Atkinson, 2 Lans. 12; Rockwell v. Merwin, 8 Abb. Pr., N. S., 330; Garver v. Kent, 70 Ind. 428; Manlove v. Burger, 38 Ind. 211; Alexander v. Relfe, 9 Mo. App. 133; Lathrop v. Knapp, 37 Wis. 307; Miller v. Mackenzie, 29 N. J. Eq. 291; Battle v. Davis, 66 N. C. 252; Gadsden v. Whaley, 14 S. C. 210; Searles v. Jacksonville etc. R. R., 2 Woods, 621; [Wright v. Nostrand, 94 N. Y. 31 (to set aside fraudulent conveyance made by debtor).] *Particular powers.* — In the enforcement of payment of debts: Ex parte Harris, L. R. 2 Ch. Div. 423; Ex parte Hare, L. R. 10 Ch. 218; Jolly v. Arbutnot, 4 De Gex & J. 224; Screven v. Clark, 48 Ga. 41; Seagram v. Tuck, L. R. 18 Ch. Div. 296 (right to set up statute of limitations); Ex parte Browne, L. R. 16 Ch. Div. 497 (lien on assets); Porter v. Kingman, 126 Mass. 141 (cancellation of mortgage); Pond v. Cooke, 45 Conn. 126; 29 Am. Rep. 668 (over property taken into another state); Hoover v. Montclair etc. R'y, 29 N. J. Eq. 4 (to make repairs); Mann v. Fairchild, 3 Abb. App. 152 (assignment of his right); Koontz v. Northern Bank, 16 Wall. 196 (of purchaser under receiver's deed); [Kneeland v. Am. L. & T. Co., 136 U. S. 89 (power to contract debts for operating railroad).] *His duties and liabilities in general:* Ex parte Gordon, L. R. 20 Eq. 291; Kain v. Smith, 80 N. Y. 458; Clark v. Binninger, 11 Jones & S. 126, 344; Corey v. Long, 12 Abb. Pr., N. S., 427; Coe v. N. J. etc. R. R., 27 N. J. Eq. 37; Klein v. Jewett, 26 N. J. Eq. 474; Commonwealth v. Young, 11 Phila. 606; Stewart v. Lay, 45 Iowa, 604; Demain v. Cassidy, 55 Miss. 320; Stanton v. Ala. etc. R. R., 2 Woods,

of the court, and will be protected by it from interference by third persons in the discharge of his duties; indeed, such interference without permission of the court would be a contempt. The receiver, in all important matters, acts under special direction of the court. He must, in general, obtain its permission to bring suits, and suits cannot be properly brought against him without permission. Although not strictly a trustee, because the legal title to the property is not vested in him, he occupies a fiduciary position, and must act with perfect good faith, and is liable to account. The exact nature of his duties depends upon the particular case.

506; *Davenport v. Receivers*, 2 Woods, 519; *Davis v. Gray*, 16 Wall. 203. *Suits against them*: *Killmer v. Hobart*, 8 Abb. N. C. 426; 58 How. Pr. 452 (foreign receivers); *Barton v. Barbour*, 3 McAr. 212; 36 Am. Rep. 104 (ditto); *Express Co. v. Railroad Co.*, 99 U. S. 191 (for a specific performance); *Palys v. Jewett*, 32 N. J. Eq. 302 (at law for a tort); *Hackley v. Draper*, 60 N. Y. 88; 4 Thomp. & C. 614 (to set aside a fraudulent sale); *De Graffenried v. Brunswick etc. R. R.*, 57 Ga. 22; [*Decker v. Gardner*, 124 N. Y. 334; *Woerishoffer v. N. R. C. Co.*, 99 N. Y. 398; 52 Am. Rep. 34. He cannot generally be sued without leave of court; *Barton v. Barbour*, 104 U. S. 126; *Melendy v. Barbour*, 78 Va. 544.] *His liability for negligence, trespasses, etc.*: *Newell v. Smith*, 49 Vt. 255; *Kain v. Smith*, 11 Hun, 552; *Henderson v. Walker*, 55 Ga. 481; *Meara's Adm'r v. Holbrook*, 20 Ohio St. 137; 5 Am. Rep. 633; *Potter v. Bunnell*, 20 Ohio St. 150; *Hills v. Parker*, 111 Mass. 508; 15 Am. Rep. 63 (trespasses). *Particular liabilities, default in payments of balance*: In re

Bell's Estate, L. R. 9 Eq. 172; *Hobson v. Jones*, L. R. 9 Eq. 456; *Clark v. Bining*, 75 N. Y. 344. *For wrongful use of funds*: *Cartwright's Case*, 114 Mass. 230; *Drake v. Goodridge*, 6 Blatchf. 531; *Wall v. Pulliam*, 5 Heisk. 365 (for property lost); *Hinckley v. Railroad Co.*, 100 U. S. 153 (for interest); *Stretch v. Gowdey*, 3 Tenn. Ch. 565 (failure to report); *Cowdrey v. Galveston etc. R. R.*, 93 U. S. 352 (expenditure disallowed). *His compensation*: *Hopfensack v. Hopfensack*, 61 How. Pr. 498; *Crook v. Findley*, 60 How. Pr. 375; *Gardiner v. Tyler*, 2 Abb. App. 247; *McArthur v. Montclair R. R.*, 27 N. J. Eq. 77; *Jones v. Keen*, 115 Mass. 170; *Special Bank Comm'rs v. Cranston Sav. Bank*, 12 R. I. 497; *Special Bank Comm'rs v. Franklin Sav. Inst.*, 11 R. I. 557; *Mabry v. Brown*, 12 Heisk. 597; *Brien v. Harriman*, 1 Tenn. Ch. 467; *Hutchinson v. Hampton*, 1 Mont. Ter. 39; [*United States Trust Co. v. New York etc. R. R. Co.*, 101 N. Y. 478; *Tome v. King*, 64 Md. 166; *Stuart v. Boulware*, 133 U. S. 78.]

SECOND GROUP.

REMEDIES PURELY PREVENTIVE.

CHAPTER FIRST.

INJUNCTIONS.

SECTION I.

TO PROTECT OR RESTRAIN THE VIOLATION OF OBLIGATIONS
AND RIGHTS OF PROPERTY OR OF CONTRACT, EITHER
LEGAL OR EQUITABLE.

ANALYSIS.

- § 1337. General nature and objects: Interdicts.
- § 1338. Fundamental principle.
- § 1339. To protect purely equitable estates or interests, and in aid of purely equitable remedies.
- § 1340. The same: Particular instances.
- §§ 1341-1344. To prevent the violation of contracts.
- § 1341. General doctrine.
- § 1342. 1. Restrictive covenants creating equitable easements.
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- § 1345. Miscellaneous cases: Corporations and their officers; between mortgagor and mortgagee; public officers; cloud on title; married women's property; partners, etc.

§ 1337. **General Nature and Object.** — The remedy of injunction was undoubtedly borrowed by the chancellors from the "interdicts" of the Roman law.¹ An injunction

¹ As to "interdicts," see Gaius's Inst., lib. 4, secs. 138-170; Poste's ed., 492-520; Just. Inst., lib. 4, tit. 15, secs. 1-8; Sanders's ed., 1st Am. ed., 58, 570-580. The general definition as given by Gaius (Ibid., sec. 139) is as follows: "Under certain circumstances, chiefly when possession or *quasi* possession [i. e.,

possession of a servitude] is in dispute, the first step in the legal proceedings is the interposition of the prætor or pro-consul, who commands some performance or forbearance; which commands, formulated in solemn terms, are called interdicts." The most general formula was "*vim fieri veto, exhibeas, restituas*," "I for-

may be either a final remedy obtained by a suit, or a preliminary and interlocutory relief granted while the suit is pending. In the first case it is a decree, in the second, an order or writ. Whatever be its form, decree or order, the remedy by ordinary injunction is wholly preventive, prohibitory, or protective. The same is true in theory and in form of a mandatory injunction, which always by its language prohibits the continuance of an act or of a structure, although in effect and in its essential nature it is wholly restorative, and compels the defendant to restore the thing to its original situation. While injunctions may thus be final, or preliminary and ancillary to other final relief, they all depend upon the same *general* principles, doctrines, and rules which determine and regulate the exercise of the jurisdiction to award them. In the states adopting the reformed procedure, the codes contain general provisions describing the cases in which an injunction may be issued, but these provisions do not materially alter the settled equitable jurisdiction, except in reference to injunctions against actions or judgments at law.¹

bid you to use violence, you must produce, you must restore." There were thus three distinct species of interdicts: 1. The prohibitory, where the defendant was commanded to refrain or desist from some act, answering to our ordinary injunction; 2. The exhibitory, where the defendant was commanded to produce and exhibit something in his possession, — *exhibeas*, which does not answer to any kind of injunction, but has some analogies with certain common-law writs; 3. The restorative, where the defendant was commanded to restore something to its original position, clearly resembling in its effect our mandatory injunction. Interdicts were granted where some danger was apprehended, or some injury was being done, to something of a *quasi* public character, as the stopping up of a highway, or to some private interest or right. One of the most common occasions of the interdict was to protect the plaintiff in his

possession of a thing, in which case the interdict *uti possidetis* was used to protect possession of land and buildings, and the interdict *utrubi* for movables. In the interdict *uti possidetis*, the defendant was forbidden to interfere with the possession "*nec vi, nec clam, nec precario*." The granting of interdicts belonged wholly to the "extraordinary" or equitable jurisdiction of the magistrate: See *ante*, vol. 1, § 6.

¹ *California*: Code Civ. Proc., sec. 526; *Civ. Code*, secs. 3420, 3422, 3423; *Arkansas*: Dig. of Stats. 1874, sec. 3450; *Colorado*: Code Civ. Proc. 1880, sec. 119; *Dakota*: Code Civ. Proc. 1877, p. 509, sec. 189; *Florida*: Code Civ. Proc. 1870, sec. 168; *Indiana*: 2 Davis's Stats. 1876, p. 93, sec. 137; *Iowa*: 2 Miller's Rev. Code 1880, secs. 3386, 3388; *Kansas*: Dassel's Comp. Laws 1881, p. 632, sec. 238; *Kentucky*: Bullitt's Codes 1876, p. 59, sec. 272; *Minnesota*: Young's Stats. 1878, p. 738, sec. 200; *Missouri*: 1 Rev. Stats.

§ 1338. **Fundamental Principle.**—In determining whether an injunction will be issued to protect any right of property, to enforce any obligation, or to prevent any wrong, there is one fundamental principle of the utmost importance, which furnishes the answer to any questions, the solution to any difficulties which may arise. This principle is both affirmative and negative, and the affirmative aspect of it should never be lost sight of, any more than the negative side.¹ The general principle may be stated as follows: Wherever a right exists or is created, by contract, by the ownership of property or otherwise, cognizable by law, *a violation of that right will be prohibited*, unless there are other considerations of policy or expediency which forbid a resort to this prohibitive remedy. *The restraining power of equity extends, therefore, through the whole range of rights and duties which are recognized by the law, and would be applied to every case of intended violation, were it not for certain reasons of expediency and policy which control and limit its exercise.*² This jurisdiction of equity to prevent the commission of wrong is, however, modified and restricted by considerations of expediency and of convenience which confine its application to those cases in which the legal remedy is not full and adequate. Equity will not interfere to restrain the breach of a contract, or the commission of a tort, or the violation of any right, when the legal remedy of compensatory damages would be complete and adequate. The

1879, p. 454, sec. 2703; *Nebraska*: Brown's Comp. Laws 1881, p. 563, sec. 251; *Nevada*: 1 Comp. Laws 1873, p. 314, sec. 1173; *New York*: Code Civ. Proc., secs. 603, 604; *North Carolina*: Battle's Rev. 1873, p. 183, sec. 189; *Ohio*: 2 Rev. Stats. 1880, p. 1353, sec. 5572; *Oregon*: Gen. Laws 1872, p. 194, sec. 407; *South Carolina*: Rev. Stats. 1873, p. 621, sec. 242; *Wisconsin*: Rev. Stats. 1878, sec. 2774. See also *Georgia*: Code 1882, p. 803, secs. 3210 (3149); *Texas*: Rev. Stats. 1879, p. 415, art. 2873.

¹ A comparison of the English and American reports will show that our

courts have dwelt too much on the negative side of this principle, and have almost ignored its affirmative aspect. While the English judges have gradually but steadily enlarged the scope of the injunction, the tendency of the American decisions has been to narrow it even within the well-established limits of the jurisdiction. If "an ounce of prevention is worth a pound of cure," this tendency is clearly opposed to the best interests of society.

² [Tuchman v. Welch, 42 Fed. Rep. 548, 559.]

incompleteness and inadequacy of the legal remedy is the criterion which, under the settled doctrine, determines the right to the equitable remedy of injunction.¹ In the treatment of this twofold principle, I shall state the general rules which have been derived from it, and which regulate the exercise of the jurisdiction, and shall illustrate these rules by enumerating the more important instances to which they have been applied. The general object of the discussion will be to show when an injunction may be granted.²

§ 1339. **To Protect Purely Equitable Estates or Interests, and in Aid of Purely Equitable Remedies.**—The jurisdiction to grant injunctions restraining acts in violation of trusts and fiduciary obligations, or in violation of any other purely equitable estates, interests, or claims in and to specific property, is really commensurate with the equitable remedies given to enforce trusts and fiduciary duties, or to establish and enforce any other equita-

¹ *Jersey City v. Gardner*, 33 N. J. Eq. 622; *Powell v. Foster*, 59 Ga. 790; *Johnson v. Conn. Bank*, 21 Conn. 148, 157; *Watson v. Sutherland*, 5 Wall. 74; [*North v. Peters*, 133 U. S. 271. The discretionary nature of the remedy is well illustrated by the case of *McBryde v. Sayre*, 86 Ala. 453.] An injunction will not be granted to restrain arrests: *Davis v. Am. Soc. etc.*, 6 Daly, 81; 75 N. Y. 362; *Cohen v. Goldsboro*, 77 N. C. 2; nor to restrain other mere criminal acts: *Phillips v. Stone Mountain*, 61 Ga. 386; *Life Ass'n of Am. v. Boogher*, 3 Mo. App. 173; [see note to § 1361.] As to injunction against threatened acts in another state, see *Atlantic etc. Tel. Co. v. Baltimore & O. R. R.*, 14 Jones & S. 377; *Western U. Tel. Co. v. Western etc. R. R.*, 8 Baxt. 54; [*Alexander v. Tolleston Club*, 110 Ill. 65.] As to the grounds and requisites for the granting of a preliminary injunction, see *McHenry v. Jewett*, 90 N. Y. 58; *Sheridan v. Jackson*, 72 N. Y. 170; *Scofield v. Whitelegge*, 49 N. Y. 259; *N. Y. Printing etc. Estab. v. Fitch*, 1 Paige, 98; *Corporation of N. Y. v. Mapes*, 6 Johns. Ch. 46; *Ogden v. Kip*,

6 Johns. Ch. 160; *Babcock v. New Jersey etc. Co.*, 20 N. J. Eq. 296; *Richard's Appeal*, 57 Pa. St. 105; 93 Am. Dec. 202; [*Strasser v. Moonelis*, 108 N. Y. 611; *Booraem v. N. H. C. R. R. Co.*, 40 N. J. Eq. 557; *Atlantic C. W. W. Co. v. Consumers' Water Co.*, 44 N. J. Eq. 427; *Newark Aqueduct Board v. Passaic*, 46 N. J. Eq., 552; *Farley v. Hopkins*, 79 Cal. 203; *Ogletree v. McQuaggs*, 67 Ala. 580; 42 Am. Rep. 112.]

² The general effect produced by some text-books and judicial opinions might lead the reader to suppose that the main object of the writers or the judges was to show when injunctions could *not* be granted. The full force and effect of this most beneficial remedy, and the freedom with which it is granted by courts of the highest authority, can only be ascertained by an actual examination of the decided cases. It is for this reason that I have cited so many decisions under several of the subsequent heads. An exhaustive treatment of injunctions would require a whole volume, and would, in fact, be a review of the entire remedial department of equity.

ble estates, interests, or claims, with respect to specific things, whether lands, chattels, securities, or funds of money, or to relieve against mistake, or fraud done or contemplated with respect to such things. In all such cases the question whether the remedy at law is adequate cannot arise; much less can it be the criterion by which to determine whether an injunction can be granted; for there is no remedy at law. Since the estate, interest, or claim of the complainant is purely equitable, it is exclusively cognizable by equity; and if its existence is shown, a court of equity not only has the jurisdiction, but is bound to grant every kind of remedy necessary to its complete establishment, protection, and enforcement according to its essential nature. Many breaches of trust are of such a nature that, if accomplished, they would completely defeat the right of the beneficiary to the specific trust property. The equitable reliefs against mistake or fraud with respect to specific equitable property, and the equitable remedies of all kinds to enforce trusts, express or by operation of law, and fiduciary duties concerning specific property, and to enforce any other equitable estate, interest, lien, or right in or over specific property, would be of comparatively little practical value, unless the court could by injunction restrain the alienation, transfer, or encumbrance of such property, and all other modes of dealing with it which would prejudice the rights of the complainant, and prevent him from acquiring the title, or from enjoying his estate, or from enforcing his claim, or from receiving the full benefits of his final relief.¹ It may therefore be stated as a general proposition, that whenever the equitable relief against mistake or fraud with respect to specific property, or the

¹ It is true that in suits concerning land, the statute authorizing a notice of *lis pendens* to be filed affords some security to the complainant against transfers and encumbrances pending the suit. But this statute does not affect the truth nor generality of the proposition contained in the text. *At the ut-*

most, it only shows that in such cases "the aid of an injunction is not required." But the notice of *lis pendens* is, at best, only a partial relief; it does not prevent a transfer; it does not even obviate the necessity of an injunction in many suits concerning land; and it does not generally extend to other suits at all.

equitable remedy of enforcing trusts or fiduciary duties concerning specific property, or of enforcing any other equitable estates, interests, or claims in or to specific property, *requires the aid of an injunction*, a court of equity has jurisdiction, and will exercise that jurisdiction, to grant an injunction, either pending the suit or as a part of the final decree, to restrain a breach of trust or of fiduciary duty, or to restrain an alienation, transfer, assignment, encumbrance, or other kind of dealing with the property, which would be in violation of the trust or fiduciary duty, or in fraud of the complainant's rights, and which would therefore interfere with and prejudice the ultimate remedies to which he may be entitled with respect to such property. The particular instances to which this doctrine is applied are almost numberless, and extend through the entire range of equitable remedies against mistake and fraud, or to enforce trusts and fiduciary duties, or to establish and enforce other equitable estates, interests, liens, and primary rights in and to specific property of any kind or form.

§ 1340. **The Same. Particular Instances.** — Among the instances in which equity will grant an injunction, preliminary or final, in pursuance of the general doctrine as stated in the foregoing paragraph, the following are some of the most important, and they fully illustrate and establish the doctrine itself, in all its generality, and the grounds upon which it rests: To prevent the transfer of negotiable instruments, at the suit of the defrauded maker or acceptor, or of the party claiming to be the true owner, or to have an interest in them;¹ or the trans-

¹ Lord Chedworth v. Edwards, 8 Ves. 46; Stead v. Clay, 1 Sim. 294; 4 Russ. 550; Smith v. Haytwell, Amb. 66; 3 Atk. 566; King v. Hamlet, 4 Sim. 223; Hood v. Aston, 1 Russ. 412; Thompson v. Smith, 1 Madd. 395; Lloyd v. Gurdon, 2 Swanst. 180; Patrick v. Harrison, 3 Brown Ch. 476; Thiedemann v. Goldschmidt, 1 De Gex, F. & J. 4, 10 (an injunction refused against a defendant who was a *bona fide* holder for value); Ferguson v. Fisk, 28 Conn. 501; Hile v. Davison, 20 N. J. Eq. 228; Metler's Adm'rs v. Metler, 18 N. J. Eq. 270; 19 N. J. Eq. 457; Zeigler v. Beasley, 44 Ga. 56; Hinkle v. Margerum, 50 Ind. 240; Osborn v. U. S. Bank, 9 Wheat. 738, 845; Deaderick v. Mitchell, 6 Baxt. 35; Bridges v. Robinson, 2 Tenn. Ch. 720;

fer, under like circumstances, of stocks or other securities not strictly negotiable;¹ or even the transfer of chattels, when of a special nature and value, such as diamonds, and the like articles;² to prevent a payment of money in violation of a trust;³ to restrain a breach of trust;⁴ to prevent a defendant from affecting or encumbering the property in litigation by contract, conveyance, mortgage, or any other act;⁵ and, in general, in all suits to enforce an equitable right against specific property,—as to enforce an equitable estate and compel the conveyance of the legal title, to enforce a trust, or an equitable lien, to compel the specific performance of a contract, and the like,—

Belohradsky v. Kuhn, 69 Ill. 547; [*Moeckly v. Gorton*, 78 Iowa, 202; *Wilhelmson v. Bentley*, 25 Neb. 473.]

This remedy is often used in connection with suits for cancellation: See *post*, chapter on cancellation; [also § 1363, note, and § 221.]

¹ *King v. King*, 6 Ves. 172; *Lord Chedworth v. Edwards*, 8 Ves. 46; *Stead v. Clay*, 1 Sim. 294; 4 Russ. 550; *Athenæum Life Ass. Co. v. Pooley*, 3 De Gex & J. 294; *Osborn v. U. S. Bank*, 9 Wheat. 738, 844, 845; *Hile v. Davison*, 20 N. J. Eq. 228; *Elder v. First Nat. Bank*, 12 Kan. 238.

² The jurisdiction in such case depends upon the same reasons as the analogous jurisdiction to compel the delivery up of such unique chattels, or the specific performance of contracts for their sale: *Post*, § 1402; *Ximenes v. Franco*, 1 Dick. 149; *Tonnins v. Prout*, 1 Dick. 387; [*Equitable Gas Light Co. v. Baltimore etc. Co.*, 63 Md. 285.]

³ *Reeve v. Parkins*, 2 Jacob & W. 390; *Green v. Lowes*, 3 Brown Ch. 217; *Whittingham v. Burgoyne*, 3 Anstr. 900; *Mathews v. Jones*, 2 Anstr. 506; *Hawkshaw v. Parkins*, 2 Swanst. 539; *Hine v. Handy*, 1 Johns. Ch. 6. In *Bank of Turkey v. Ottoman Co.*, L. R. 2 Eq. 366, an injunction was refused because the money was not shown to be impressed with a trust; if this fact had appeared, the opinion clearly indicates that an injunction would have been granted. See also *Ernest v. Croysdill*, 2 De Gex, F. & J. 175.

⁴ *Dauce v. Goldingham*, L. R. 8 Ch. 902; *Brenan v. Preston*, 2 De Gex, M. & G. 813; *North Car. R. R. v. Drew*,

3 Woods, 674; [*Cohen v. Morris*, 70 Ga. 313.] In suits by a beneficiary against his trustee, an injunction, if needed, would be granted as a matter of course. To restrain violations of confidence: See *Little v. Kingswood Coll. Co.*, L. R. 20 Ch. Div. 733 (to prevent an attorney from acting against a former client); *Lewis v. Smith*, 1 Macn. & G. 417 (to prevent disclosure of confidential communications by an attorney); *Brenan v. Preston*, 2 De Gex, M. & G. 813 (against a ship's husband); *Phelan v. Boylan*, 25 Wis. 679 (by reversioner against life tenant to prevent his use of a tax title); [*Pollard v. Photographic Co.*, 40 Ch. Div. 345 (photographer restrained from exhibiting and selling to the public the copies of the photograph of a woman which he had taken for her own use; decision rested partly on the ground of violation of confidence).] To restrain the disclosure of confidential communications, trade secrets, private papers, etc.: See *Yovatt v. Winyard*, 1 Jacob & W. 394; *Newbery v. James*, 2 Mer. 446, 451; *Williams v. Williams*, 3 Mer. 157; *Morison v. Moat*, 9 Hare, 241; *Peabody v. Norfolk*, 98 Mass. 452; 96 Am. Dec. 664. [See also *Taber v. Hoffman*, 118 N. Y. 33; 16 Am. St. Rep. 740; *Salomon v. Hertz*, 40 N. J. Eq. 400 (secret process of manufacture).]

⁵ *Great West. R'y v. Birmingham etc. Ry.*, 2 Phill. Ch. 597, 602, 603, per Lord Cottenham; *Echliif v. Baldwin*, 16 Ves. 267; *Curtis v. Marquis of Buckingham*, 3 Ves. & B. 163; *Spiller v. Spiller*, 3 Swanst. 556; and see cases in next following note.

the court will grant an injunction to restrain a threatened transfer of the property, whether land, chattels, or securities, during the pendency of the action.¹

§ 1341. **To Prevent the Violation of Contracts.**—An injunction restraining the breach of a contract is a negative specific enforcement of that contract. The jurisdiction of equity to grant such injunction is substantially coincident with its jurisdiction to compel a specific performance. Both are governed by the same doctrines and rules; and it may be stated as a general proposition that wherever the contract is one of a class which will be affirmatively specifically enforced, a court of equity will restrain its breach by injunction, if this is the only practical mode of enforcement which its terms permit.² Where the agreement stipulates that certain acts shall not be done, an injunction preventing the commission of those acts is evidently the only mode of enforcement; but the remedy of injunction is not confined to contracts whose stipulations are negative; it often extends to those which are affirmative in their provisions, where the affirmative stipulation implies or includes a negative. The universal test of the jurisdiction, admitted alike by the courts of England and of the United States, is the inad-

¹ *Fells v. Read*, 3 Ves. 70; *Lloyd v. Loaring*, 6 Ves. 773; *Nutbrown v. Thornton*, 10 Ves. 159, 163; *Echliff v. Baldwin*, 16 Ves. 267; *Daly v. Kelly*, 4 Dow, 417, 440; *Wood v. Rowcliffe*, 3 Hare, 304, 308; *Robinson v. Pickering*, L. R. 16 Ch. Div. 371, 660 (in suit to enforce married woman's contract against her separate estate, an injunction restraining her from aliening her property will not be granted, because her contract creates no lien or charge on her estate); *Lemprière v. Lange*, L. R. 12 Ch. Div. 675 (injunction in suit for cancellation on account of fraud); *Hart v. Herwig*, L. R. 8 Ch. 860 (in specific performance of contract for sale of a ship); *Beyfus v. Bullock*, L. R. 7 Eq. 391 (in suit to set aside a deed for fraud); *Hadley v. London Bank of Scotland*, 3 De Gex, J. & S. 63 (in specific performance); *De Mattos v. Gibson*, 4 De Gex & J.

276 (ditto); *Brenan v. Preston*, 2 De Gex, M. & G. 813 (suit against trustee); *Lemprière v. Lange*, L. R. 12 Ch. Div. 675; *Vavasseur v. Krupp*, L. R. 9 Ch. Div. 351; *Building Ass'n v. Ashmead*, 7 Phila. 272; *Joseph v. McGill*, 52 Iowa, 127 (against fraudulent grantee); *French v. Snell*, 29 N. J. Eq. 95 (against assignee of a mortgage; the assignment void); *Venable v. Everett*, 63 Ga. 633; *Sierra Nev. Min. Co. v. Sears*, 10 Nev. 346; *Vogler v. Montgomery*, 54 Mo. 577; [*Chambers v. Alabama Iron Co.*, 67 Ala. 353 (in specific performance); *Stratton v. Stratton*, 58 N. H. 473; 42 Am. Rep. 604 (in aid of specific performance of an antenuptial contract); *Reese's Appeal*, 122 Pa. St. 392 (in specific performance of contract for assignment of a patent).]

² [*Chicago Mun. Gas Light Co. v. Town of Lake*, 130 Ill. 42.]

equacy of the legal remedy of damages in the class of contracts to which the particular instance belongs.¹ This general doctrine is fully sustained by the cases cited in the succeeding paragraphs as illustrations of its application. A clearer notion of the doctrine will perhaps be obtained by considering the contracts to which it applies in three main classes: 1. Those restrictive covenants which create equitable easements; 2. Agreements stipulating for personal services or acts; 3. Other agreements, generally negative in their nature.

§ 1342. **1. Restrictive Covenants Creating Equitable Easements.**—This doctrine has already been examined, and it has been shown that restrictive covenants in deeds, leases, and agreements limiting the use of land in a specified manner, or prescribing a particular use, which create equitable servitudes on the land, will be specifically enforced in equity by means of an injunction, not only between the immediate parties, but also against subsequent purchasers with notice, even when the covenants are not of the kind which technically run with the land.² The injunction in this class of cases is granted almost as a matter of course upon a breach of the covenant. The amount of damages, and even the fact that the plaintiff has sustained *any* pecuniary damages, are wholly immaterial. In the words of one of the ablest of modern equity judges: "It is clearly established by authority that there is sufficient to justify the court interfering, if there has been a breach of the covenant. It is not for the court, but the plaintiffs, to estimate the amount of damages that arises from the injury inflicted upon them. The moment the court finds that there has been a breach

¹ The modern English decisions have been much more liberal than the American cases in applying this test, and the English courts have more freely used the injunction to prevent the violation of contracts than the majority of the American judges have been willing to go. The *tendency* of the American courts has been to limit,

rather than to enlarge, the jurisdiction in cases of contracts. English courts will enjoin the violation of some contracts, even though they cannot be specifically enforced. The American decisions, with few exceptions, refuse to adopt this doctrine.

² See *ante*, vol. 2, § 689; vol. 3, § 1295.

of the covenant, that is an injury, and the court has no right to measure it, and no right to refuse to the plaintiff the specific performance of his contract, although his remedy is that which I have described," namely, an injunction.¹

§ 1343. **2. Contracts for Personal Services or Acts.**—Where a contract stipulates for special, unique, or extraordinary personal services or acts, or for such services or acts to be rendered or done by a party having special, unique, and extraordinary qualifications, — as, for example, by an eminent actor, singer, artist, and the like, — it is plain that the remedy at law of damages for its breach might be wholly inadequate, since no amount of money recovered by the plaintiff might enable him to obtain the same or the same kind of services or acts elsewhere, or by employing any other person. It is, however, a familiar doctrine that a court of equity will not exercise its jurisdiction to grant the remedy of an *affirmative* specific performance, however inadequate may be the remedy of damages, whenever the contract is of such a nature that the decree for its specific performance cannot be enforced and its obedience compelled by the ordinary processes of the court. A specific performance in such cases is said

¹ Per Sir George Jessel, M. R., in *Leech v. Schweder*, L. R. 9 Ch. 463, 465, note, 468, note; *Tipping v. Eckersley*, 2 Kay & J. 264, 270, 273; *Dickenson v. Grand Junc. C. Co.*, 15 Beav. 260, 270; *Western v. MacDermot*, L. R. 1 Eq. 499, 505; 2 Ch. 72, 75; *Evans v. Davis*, L. R. 10 Ch. Div. 747; *Kemp v. Sober*, 1 Sim., N. S., 517, 520. For illustrations of such restrictive covenants and of the general doctrine, see cases cited *ante*, under §§ 689, 1295; *Lord Gresham v. Wilton v. Saxon*, 6 Ves. 106; *Fleming v. Snook*, 5 Beav. 250; *Hodson v. Coppard*, 29 Beav. 4; *Bramwell v. Lacy*, L. R. 10 Ch. Div. 691; *Evans v. Davis*, L. R. 10 Ch. Div. 747; *Master v. Hansard*, L. R. 4 Ch. Div. 718 (injunction refused; no breach); *Lord Manners v. Johnson*, L. R. 1 Ch. Div. 673; *Aspden v. Seddon*, L. R. 10 Ch. 394 (no breach); *Gearns v. Baker*, 10 Ch. 355 (ditto); *Booth v. Alcock*, L. R. 8 Ch. 663 (ditto); *Catt v. Tourle*, L. R. 4 Ch. 654; *Leader v. Moody*, L. R. 20 Eq. 145 (injunction refused under very special facts); *Telford v. Metrop. Board of Works*, L. R. 13 Eq. 574; *Feilden v. Slater*, L. R. 7 Eq. 523; *Peck v. Matthews*, L. R. 3 Eq. 515 (injunction refused; plaintiff's acquiescence); *Lloyd v. London etc. R'y*, 2 De Gex, J. & S. 568; *Piggott v. Stratton*, 1 De Gex, F. & J. 33; *Nicholson v. Rose*, 4 De Gex & J. 10; *Coles v. Sims*, 5 De Gex, M. & G. 1; *Hall v. Wesster*, 7 Mo. App. 56; *Steward v. Winters*, 4 Sand. Ch. 587; *Trustees etc. v. Thacher*, 87 N. Y. 311; 41 Am. Rep. 365; and see cases cited in note under § 1344; [*Morris v. Tuskaloosa Mfg. Co.*, 83 Ala. 565; *Sutton v. Head*, 86 Ky. 156; 9 Am. St. Rep. 274; *Godfrey v. Black*, 39 Kan. 193; 7 Am. St. Rep. 544; *Stees v. Kranz*, 32 Minn. 313.]

to be impossible; and contracts stipulating for personal acts have been regarded as the most familiar illustrations of this doctrine, since the court cannot in any direct manner compel an actor to act, a singer to sing, or an artist to paint. Applying the same course of reasoning, the English courts formerly held that they could not *negatively* enforce the specific performance of such contracts by means of an injunction restraining their violation.¹ Those courts have, however, entirely receded from this latter conclusion. The rule is now firmly established in England that the violation of such contracts may be restrained by injunction, whenever the legal remedy of damages would be inadequate, and the contract is of such a nature that its negative specific enforcement is possible. This rule was first applied to stipulations which were in form expressly negative, but was soon extended to affirmative contracts which implied or involved negative stipulations.²

¹ *Kemble v. Kean*, 6 Sim. 333; *Kimberley v. Jennings*, 6 Sim. 340; for American decisions to the same effect, see next following notes.

² The leading case is *Lumley v. Wagner*, 1 De Gex, M. & G. 604, in which the defendant, a "prima donna," had agreed to sing for a certain specified period in the plaintiff's opera-house, and also that she would not sing elsewhere during that time. The opinion by Lord Chancellor St. Leonards contains a full review of the previous authorities, and a most able and convincing discussion of the principle. In *Montague v. Flockton*, L. R. 16 Eq. 189, the rule was extended to a contract by an actor which contained no negative stipulation. [In *Whitwood Chemical Co. v. Hardman*, (1891), 2 Ch. 416, the rule was limited to contracts containing negative stipulations, and *Montague v. Flockton* was disapproved.] See also *Wolverhampton etc. R'y v. London etc. R'y*, L. R. 16 Eq. 433; *Ward v. Beeton*, L. R. 19 Eq. 207; *Donnell v. Bennett*, L. R. 22 Ch. Div. 835; *Fothergill v. Rowland*, L. R. 17 Eq. 132, 141; *Garrett v. Banstead etc. R'y*, 4 De Gex, J. & S. 462; *Munro v. Wivenhoe etc. R'y*, 4

De Gex, J. & S. 723; *Jennings v. Brighton etc. Board*, 4 De Gex, J. & S. 735; *De Mattos v. Gibson*, 4 De Gex & J. 276 (a charter-party); *Johnson v. Shrewsbury etc. R'y*, 3 De Gex, M. & G. 914; *Stocker v. Brockelbank*, 3 Macn. & G. 250; *Sainter v. Ferguson*, 1 Macn. & G. 286. The most recent English decisions interfere to restrain the violation of such contracts even while conceding that their specific performance could not be enforced. This doctrine has been adopted and acted upon to its full extent by a few modern American cases: *Western U. Tel. Co. v. Union Pac. R'y*, 1 McCrary, 558; *Western U. Tel. Co. v. St. Jo. etc. R'y*, 1 McCrary, 565; *Singer etc. Co. v. Union etc. Co.*, 1 Holmes, 253. [See also *Metropolitan Ex. Co. v. Ewing*, 42 Fed. Rep. 198; *Cort v. Lassard*, 18 Or. 221; 17 Am. St. Rep. 726.] The American courts generally have either rejected the doctrine of *Lumley v. Wagner* entirely, or have accepted it only to a partial extent: See *Sanquirico v. Benedetti*, 1 Barb. 315; *Bank of Cal. v. Fresno etc. Co.*, 53 Cal. 201; *Western U. Tel. Co. v. Western etc. R. R.*, 8 Baxt. 54; *Crutchfield v. Wason Car Works*, 8

§ 1344. 3. Other Agreements Generally Negative in their Nature. — In all these agreements, where the stipulations are expressly negative in form, and where they belong to the class of which the specific performance would be enforced if they were affirmative in form, an injunction to restrain their violation will be granted as a general rule, and almost as a matter of course. The inadequacy of the legal remedy is the criterion; but the fact that the agreements belong to a class which would be specifically enforced necessarily shows that the legal remedy is inadequate. The particular instances of this class are very numerous, and some of the most important examples are placed in the foot-note.¹

Baxt. 242; *Smith v. McElwain*, 57 Ga. 247; *Hahn v. Concordia Soc.*, 42 Md. 460; *Manhattan Mfg. etc. Co. v. N. J. Stock Yard etc. Co.*, 23 N. J. Eq. 161; *Gallagher v. Fayette Co. R. R.*, 38 Pa. St. 102. In all cases, English and American, the inadequacy of the legal remedy is the sole criterion for interference by injunction to prevent the violation of any contract: [See *Rogers Mfg. Co. v. Rogers*, 58 Conn. 356; 18 Am. St. Rep. 278.]

¹Agreements not to carry on a trade: *Barret v. Blagrove*, 5 Ves. 555; 6 Ves. 104; *Williams v. Williams*, 2 Swanst. 253; *Shackle v. Baker*, 14 Ves. 468; *Cruttwell v. Lye*, 17 Ves. 335; *Harrison v. Gardner*, 2 Madd. 198; *Ginesi v. Cooper*, L. R. 14 Ch. Div. 596; *Jones v. Heavens*, L. R. 4 Ch. Div. 636; *Altman v. Royal Aqua. Soc.*, L. R. 3 Ch. Div. 228; *Clements v. Welles*, L. R. 1 Eq. 200; *Turner v. Evans*, 2 De Gex, M. & G. 740; *Cobbs v. Niblo*, 6 Ill. App. 60; *Ropes v. Upton*, 125 Mass. 258; *McNutt v. McEwen*, 10 Phila. 112; *Carroll v. Hickes*, 10 Phila. 308; *McClurg's Appeal*, 58 Pa. St. 51; *Harkinson's Appeal*, 78 Pa. St. 196; 21 Am. Rep. 9; *Richardson v. Peacock*, 28 N. J. Eq. 151; 26 N. J. Eq. 40; *Baumgarten v. Broadaway*, 77 N. C. S; *Berger v. Armstrong*, 41 Iowa, 447; *Caswell v. Gibbs*, 33 Mich. 331; *Doty v. Martin*, 32 Mich. 462; *Butler v. Burleson*, 16 Vt. 176; *Guerand v. Dandeleit*, 32 Md. 561; 3 Am. Rep. 164; [National Prov. Bank v. Marshall, 40 Ch. Div. 112.

See also § 934.] Not to build, etc.: *Rankin v. Huskisson*, 4 Sim. 13; *Lloyd v. Loudon etc. R'y*, 2 De Gex, J. & S. 568; *Bowes v. Law*, L. R. 9 Eq. 636; *St. Andrew's Church's Appeal*, 67 Pa. St. 512. Not to run trains past a certain station without stopping: *Hood v. North East. R'y*, L. R. 8 Eq. 666; 5 Ch. 525; *Phillips v. Great West. R'y*, L. R. 7 Ch. 409; *Rigby v. Great West. R'y*, 2 Phill. Ch. 44. Not to ring a certain bell: *Martin v. Nulkin*, 2 P. Wms. 266. By an author, not to write or publish a rival work: *Barfield v. Nicholson*, 2 Sim. & St. 1; *Morris v. Colman*, 18 Ves. 437. See also, as further illustrations, *Wolfe v. Matthews*, L. R. 21 Ch. Div. 194; *Aspden v. Seddon*, L. R. 10 Ch. 394; *Gearns v. Baker*, L. R. 10 Ch. 355; *Catt v. Tourle*, L. R. 4 Ch. 654; *Leader v. Moody*, L. R. 20 Eq. 145; *Jones v. North*, L. R. 19 Eq. 426; *Pattisson v. Gilford*, L. R. 18 Eq. 259, 262, 263; *Warne v. Routledge*, L. R. 18 Eq. 497; *Fothergill v. Rowland*, L. R. 17 Eq. 132; *Telford v. Metrop. Bd. of Works*, L. R. 13 Eq. 574; *Feilden v. Slater*, L. R. 7 Eq. 523; *Peek v. Matthews*, L. R. 3 Eq. 515; *Dyke v. Taylor*, 3 De Gex, F. & J. 467; *Nicholson v. Rose*, 4 De Gex & J. 10; *Shrewsbury etc. R'y v. London etc. R'y*, 3 Macn. & G. 70; *Wagner v. Meety*, 69 Mo. 150; *Hall v. Wesster*, 7 Mo. App. 56; *Gold etc. Tel. Co. v. Todd*, 17 Hun, 548; *Gillis v. Hall*, 2 Brewst. 342; *Beckwith v. Howard*, 6 R. I. 1; *Manhattan etc. Co. v. Van Keuren*, 23 N. J. Eq. 251;

§ 1345. **Miscellaneous Cases.**—As has already been stated, an injunction will always be granted, if necessary, to protect, aid, or enforce any equitable estate, interest, or primary right, or to secure and render efficient any purely equitable remedy. Among the most important instances in which this general doctrine is applied, in addition to those already mentioned, are the following: Against *Corporations* and their directors and officers, to restrain acts which are illegal, *ultra vires*, or in violation of their fiduciary duties.¹ While the right to membership

Haskell v. Wright, 23 N. J. Eq. 389; Parker v. Garrison, 61 Ill. 250; Frank v. Brunnemann, 8 W. Va. 462; [Bailey v. Collins, 59 N. H. 459; Myers v. Kalamazoo Buggy Co., 54 Mich. 215; 52 Am. Rep. 811 (sale of good-will).]

Contracts which are entirely affirmative in form and language may imply and include a negative, so that their violation may be restrained by injunction. In *Hamilton v. Hector*, L. R. 6 Ch. 701, a husband and wife had stipulated in a separation deed that the children should attend such schools as their father should choose, and should spend their holidays where the trustees should direct; the trustees directed that they should spend one half their holidays with their father, and the rest with their mother; the father was restrained by injunction from interfering with the children during the time they were to spend with their mother, in violation of his agreement. See also *Drury v. Molins*, 6 Ves. 328; *Pratt v. Brett*, 2 Madd. 62; *Briggs v. Law*, 4 Johns. Ch. 22; *Marvine v. Drexel's Ex'rs*, 68 Pa. St. 362; [Pollard v. Photographic Co., 40 Ch. Div. 345 (photographer enjoined from exhibiting or selling to the public copies of photograph of a woman which he had taken for her own use; the decision being rested partly on the ground of an implied contract not to use the photographic negative for such purposes). See also § 1340, note].

¹The general subject of suits against corporations, and their managing officers, based upon their trust relations, and their acts in violation thereof, has already been considered: *Ante*, §§ 1091-1096. In all such suits an injunction may be granted either as the

sole remedy, or in connection with the remedies of rescission, cancellation, accounting, etc. In connection with the cases there cited, see also the following as illustrations: To restrain *ultra vires* acts: *Lord Auckland v. Westminster Board*, L. R. 7 Ch. 597; *Metts v. Northern R'y*, L. R. 5 Ch. 621; *Pudsey Gas Co. v. Corporation of Bradford*, L. R. 15 Eq. 167; *Pickering v. Stephenson*, L. R. 14 Eq. 322; *Kernaghan v. Williams*, L. R. 6 Eq. 228; *London etc. R'y v. London etc. R'y*, 4 De Gex & J. 362; *Ware v. Regent's Canal Co.*, 3 De Gex & J. 212; *Rogers v. Oxford etc. R'y*, 2 De Gex & J. 662; *Hodgson v. Earl of Powis*, 1 De Gex, M. & G. 6; *Cohen v. Wilkinson*, 1 Macn. & G. 481; *Platteville v. Galena etc. R. R.*, 43 Wis. 493; [Tomkinson v. S. E. R'y Co., 35 Ch. Div. 675; *Sterling's Appeal*, 111 Pa. St. 35; 56 Am. Rep. 246.] To restrain unlawful acts of directors or managing officers in violation of their fiduciary duties: *Cannon v. Trask*, L. R. 20 Eq. 669; *Dowling v. Pontypool etc. R'y*, L. R. 18 Eq. 714; *Featherstone v. Cooke*, L. R. 16 Eq. 298; *Mair v. Himalaya Tea Co.*, L. R. 1 Eq. 411; *Carlisle v. South East. R'y*, 1 Macn. & G. 689 (to restrain payment of dividends); *Pond v. Vt. Valley R. R.*, 12 Blatchf. 280; *Webb v. Ridgely*, 38 Md. 364 (to restrain a fraudulent transferee of stock from voting); [Lincoln Nat. Bank v. Portland etc. R. R., 82 Me. 99 (to restrain overissue of shares to a stockholder).] To restrain the minority of a religious corporation from interfering with the control of the majority: *Cooper v. Gordon*, L. R. 8 Eq. 249; *Perry v. Shipway*, 4 De Gex & J. 353. [See also *Hackney v. Vawter*,

in a corporation, or to be a corporation officer, cannot, in general, be tested by means of an injunction, the improper or unlawful expulsion of a member from a voluntary association without good cause, or in violation of its by-laws, may be restrained by injunction. Between *Mortgagors and Mortgagees*.¹ Against *Public Officers*. An injunction will not be granted, in general, to restrain persons from acting as public officers;² but the illegal, unlawful, or improper acts of public officers may be restrained when they would produce irreparable injury, or create a cloud upon title, or when such remedy is necessary to prevent a multiplicity of suits.³ To prevent a

39 Kan. 615.] To restrain a corporation from committing a trespass: *Eversfield v. Mid-Sussex R'y*, 3 De Gex & J. 286; and see cases *post*, under head of Trespass. To restrain the expulsion of a member from a club or society: *Labouchere v. Earl of Wharcliffe*, L. R. 13 Ch. Div. 346; *Fisher v. Keane*, L. R. 11 Ch. Div. 353; *Fisher v. Board of Trade*, 80 Ill. 85; *Gregg v. Mass. Med. Soc.*, 111 Mass. 185; 15 Am. Rep. 24; *Lowry v. Read*, 3 Brewst. 452; [*Thomas v. M. M. P. Union*, 121 N. Y. 56.] As to the use of an injunction to restrain a person from being, or from acting as, an officer of a corporation, see *Aslatt v. Corpor. of Southampton*, L. R. 16 Ch. Div. 143; *Hussey v. Gallagher*, 61 Ga. 86. See also, in general, *Cromford etc. R'y v. Stockport etc. R'y*, 1 De Gex & J. 326; *Aurora etc. R. R. v. Lawrenceburgh*, 56 Ind. 80.

¹ To restrain mortgagee from improper sale under a power of sale, by advertisement, etc.: *Capehart v. Biggs*, 77 N. C. 261; *Purnell v. Vaughan*, 77 N. C. 263; *Haggerson v. Phillips*, 37 Wis. 364; *Collins v. Lamport*, 4 De Gex, J. & S. 500. [See *Badgett v. Frick*, 28 S. C. 176; *Glover v. Hembree*, 82 Ala. 324.] To restrain mortgagor from committing waste, under certain circumstances, or doing other acts to the property whereby the security would be imperiled: *Bagnall v. Villar*, L. R. 12 Ch. Div. 812 (cutting crops); *Warner v. Jacob*, L. R. 20 Ch. Div. 220; *Truman v. Redgrave*, L. R. 18 Ch. Div. 547; *Mut. Life Ins. Co. v. Bigler*, 79

N. Y. 568 (removing property); *Taylor v. Collins*, 51 Wis. 123 (same remedy on foreclosure of a land contract); [*Walker v. Radford*, 67 Ala. 446 (to prevent removal of mortgaged chattels from the jurisdiction); *Moses v. Johnson*, 88 Ala. 517; 16 Am. St. Rep. 58 (land contract); *McCormick v. Hartley*, 107 Ind. 248; *Mitchell v. Amador Canal etc. Co.*, 75 Cal. 495; *Lavenson v. Standard Soap Co.*, 80 Cal. 245; 13 Am. St. Rep. 147. But not where the waste does not imperil the security: *Moriarty v. Ashworth*, 43 Minn. 1; 19 Am. St. Rep. 203.] See also cases cited *post*, under head of Waste.

² The legal remedy is, in general, adequate to test the right to a public office: *Campbell v. Taggart*, 10 Phila. 443; *Jones v. Comm'rs of Granville*, 77 N. C. 280; *Sneed v. Bullock*, 77 N. C. 282; *Stone v. Wetmore*, 42 Ga. 601; *Sanders v. Metcalf*, 1 Tenn. Ch. 419 (no injunction to restrain a judge from acting); [*Osgood v. Jones*, 60 N. H. 543; *Gilroy's Appeal*, 100 Pa. St. 5; *MacDonald v. Rehrer*, 22 Fla. 198; *Huels v. Hahn*, 75 Wis. 468; *Reemelin v. Mosby*, 47 Ohio St. 570 (injunction not granted to restrain the removal of a public officer); *In re Sawyer*, 124 U. S. 200; *Muhler v. Hedekin*, 119 Ind. 481.]

³ [*People v. Dwyer*, 90 N. Y. 402; *Morgan v. Binghamton*, 102 N. Y. 500.] To restrain the imposition or enforcement of illegal taxes and other public burdens, at the suit of taxpayers: See *ante*, vol. 1, §§ 259, 260, 265, 266, where this subject is

Cloud upon Title. The use of the injunction to prevent acts which would create a cloud upon title is governed by the same rules which control the remedy of removing a cloud from title.¹ To protect *Married Women's* property.² In controversies between *Partners*, and in other special cases.³

fully discussed, and the conflicting results of decisions in different states are formulated. In addition to the cases there cited, see *Wagner v. Meety*, 69 Mo. 150; *Curtenius v. Grand Rapids etc. R. R.*, 37 Mich. 583; *Cattell v. Lowry*, 45 Iowa, 478; *Albany etc. Min. Co. v. Auditor-General*, 37 Mich. 391; *Sinclair v. Comm'rs of Winona Co.*, 23 Minn. 404; 23 Am. Rep. 694; *South Platte Land Co. v. Comm'rs of Buffalo County*, 7 Neb. 253; *Burlington etc. R. R. v. Comm'rs of York County*, 7 Neb. 487; *George v. Dean*, 47 Tex. 73; *Douglass v. Harrisville*, 9 W. Va. 162; 27 Am. Rep. 548; *Marsh v. Supervisors of Clark County*, 42 Wis. 502; *Schettler v. Fort Howard*, 43 Wis. 48; *Hagaman v. Comm'rs of Cloud County*, 19 Kan. 394; *Worthen v. Badgett*, 32 Ark. 496; *New Orleans etc. R. R. v. Dunn*, 51 Ala. 128; *Wells v. Dayton*, 11 Nev. 161; *Union Pacific R. R. v. Lincoln Co.*, 3 Dill. 300; *Brown v. Concord*, 56 N. H. 375; *Savings Bank v. Portsmouth*, 52 N. H. 17. To restrain the sale of land under an illegal tax or assessment: *Kean v. Asch*, 27 N. J. Eq. 57; *Oliver v. Memphis etc. R. R.*, 30 Ark. 128 (a sale of a railroad); *Deming v. James*, 72 Ill. 78 (a sale of personal property not subject to tax); *Abbott v. Edger-ton*, 53 Ind. 196 (same); *Trowbridge v. Horan*, 78 N. Y. 439; [*Spring Valley W. W. v. S. F.*, 82 Cal. 286; 16 Am. St. Rep. 116 (to restrain a board of supervisors, having power to fix water rates, from fixing unreasonable rates).] Instances of injunction refused: *Against election officers*: *Roudanez v. New Orleans*, 29 La. Ann. 271; *Harris v. Schryock*, 82 Ill. 119; *Hardesty v. Taft*, 23 Md. 512; 87 Am. Dec. 584; [*Weil v. Calhoun*, 25 Fed. Rep. 865; *Willeford v. State*, 43 Ark. 62; *People v. Supervisors*, 75 Cal. 179.] *Against a city exercising legislative powers*: *Chicago v. Wright*, 69 Ill. 318; and see *Des Moines Gas Co. v. Des Moines*, 44 Iowa, 505; 24 Am. Rep. 756; *Hugg*

v. Camden, 29 N. J. Eq. 6; *Brown v. Catlettsburg*, 11 Bush, 435; *People v. Canal Board*, 55 N. Y. 390; *Kelly v. Baltimore*, 53 Md. 134; [*Murphy v. East Portland*, 42 Fed. Rep. 308; *Montgomery Gas Light Co. v. City Council*, 87 Ala. 245; *Delaware Co.'s Appeal*, 119 Pa. St. 159.] Miscellaneous instances in which an injunction has been granted: To prevent the removal of a public school-house: *District etc. of Lodomillo v. District etc. of Cass*, 54 Iowa, 115; or the removal of a county seat: *Stuart v. Bair*, 8 Baxt. 141; [*Lanier v. Padgett*, 18 Fla. 842.] To prevent taking of private property for public use without compensation: *Folley v. Passaic*, 26 N. J. Eq. 216; and see *Tribune Ass'n v. Sun etc. Ass'n*, 7 Hun, 175; *Dairiese v. Cooke*, 91 U. S. 580; *Lewis v. Providence*, 10 R. I. 97; *People v. Chicago*, 53 Ill. 424; [*Vanderlip v. Grand Rapids*, 73 Mich. 522; 16 Am. St. Rep. 597; *Miller v. Morristown*, 47 N. J. Eq. 62; *Payne v. Kansas & A. V. R'y Co.*, 46 Fed. Rep. 546; *Quintini v. Board of Aldermen*, 64 Miss. 483; 60 Am. Rep. 62; *Church v. Joint School District*, 55 Wis. 399.]

¹ See *post*, *Removing Cloud*, and cases there cited [§ 1398, note]; *Lehman v. Roberts*, 86 N. Y. 232; *Strusburgh v. New York*, 87 N. Y. 452; *Dederer v. Voorhies*, 81 N. Y. 154; *Remington Paper Co. v. O'Dougherty*, 81 N. Y. 474.

² An injunction may be needed for this purpose; as, for example, to restrain the sale of her property for her husband's debts when her title is clear, but not unless it is clear: *Allen v. Benners*, 10 Phila. 10; *Simson v. Bates*, 10 Phila. 66; to prevent the collection of a mortgage assigned by a wife, when the assignment was void: *French v. Snell*, 29 N. J. Eq. 95.

³ In settlement of partnership affairs after a dissolution: *Large v. Ditmars*, 27 N. J. Eq. 283. Special cases: When to restrain arbitration: *Pickering v. Cape Town R'y*, L. R. 1 Eq. 84;

SECTION II.

TO PREVENT OR RESTRAIN THE COMMISSION OF TORTS.

ANALYSIS.

- § 1346. The estates and interests generally legal.
- § 1347. Kinds and classes of torts restrained.
- § 1348. Waste.
- § 1349. Nuisance: Public.
- § 1350. Nuisance: Private; when restrained.
- § 1351. Same: Instances; violations of easements.
- § 1352. Patent rights and copyrights.
- § 1353. Literary property as distinct from copyright.
- § 1354. Trade-marks.
- § 1355. Good-will.
- § 1356. Trespasses.
- § 1357. General doctrine; cases in which trespass may be enjoined.
- § 1358. Slander of title; libels; wrongful use of name.

§ 1346. **The Estates and Interests Generally Legal.**—The estates, interests, and primary rights to be secured by injunctions of this kind are in most instances legal; and the injunctions themselves, as a class, are frequently described as those for the protection of legal rights and interests. So far as they do thus sustain and enforce legal rights, they are, of course, supplementary to or in lieu of the legal remedies which courts of common law originally gave, and perhaps now give, by action, under the same circumstances. For this reason, the general test as stated in a former paragraph applies with special force. The inadequacy of the legal remedies is the criterion which determines the exercise of this preventive jurisdiction; and the criterion is enforced, especially by the American courts, with great strictness.

§ 1347. **Kinds and Classes of Torts Restrained.**—The legal remedy is ordinarily considered as adequate in

to prevent injury to the property of a foreign monarch, restraining the publication of spurious securities of the foreign government: *Emperor of Austria v. Day*, 3 De Gex, F. & J. 217; to prevent a person from taking letters from the post-office for fraudulent purposes: *Zellenkoff v. Collins*, 23 Hun, 156; and see *Guion v. Trask*, 1 De Gex, F. & J. 373.

cases of torts to the person, and to property held by a legal title, and equity does not interfere.¹ There are, however, certain species of torts, in respect to each of which, as a class, it is settled that the legal remedy is generally inadequate, so that equity will generally interfere to prevent the wrong by injunction. There are other species of torts, in respect to each of which, as a class, the legal remedy is adequate, but may become inadequate, in individual instances, from their particular circumstances, so that in those instances an injunction will be granted. In the kind of torts for which the legal remedy is generally inadequate, so that an injunction is a proper remedy, the title of the injured party must be clear, the injury real, and not merely temporary or transient. They are waste, nuisance, including interference with easements, servitudes, and similar rights, infringements of patent rights, of copyrights, of trade-marks, and of other intangible property rights, the pecuniary value of which cannot be certainly estimated, such as literary property in manuscript writings and good-will. In ordinary trespasses the injured party is left to his remedy of damages, but the circumstances of a trespass to property — especially to real property — may be such that the compensatory remedy is inadequate, and a court of equity will prevent the wrong by injunction.

§ 1348. **Waste.** — Waste is the destruction or improper deterioration or material alteration of things forming an essential part of the inheritance, done or suffered by a person rightfully in possession by virtue of a temporary or partial estate, — as, for example, a tenant for life or for years. The rightful possession of the wrong-doer is essential, and constitutes a material distinction between waste and tres-

¹ Injunction never granted to restrain criminal acts: *Phillips v. Stone Mountain*, 61 Ga. 386; *Life Ass'n v. Boogher*, 3 Mo. App. 173; nor arrests: *Davis v. Am. Soc.*, 6 Daly, 81; 75 N. Y. 362; *Cohen v. Comm'rs of Goldsboro*, 77 N. C. 2. No preliminary injunc-

tion will be granted while the plaintiff's legal right is really doubtful and unsettled: *Nat. Docks R. R. v. Central R. R.*, 32 N. J. Eq. 755; overruling *Cent. R. R. v. Pa. R. R.*, 31 N. J. Eq. 475.

pass.¹ The remedy by injunction is fully established, and has not only virtually superseded the old common-law "action of waste," but has to a great extent taken the place of the "action on the case" for damages. An injunction will be granted in all cases where a legal action would lie to recover possession of the land wasted, or to recover damages.² It will also be granted in many instances where no legal action can be maintained, although the interest of the injured party is legal;³ and where the estate of the injured party is wholly equitable;⁴ and where

¹ Many acts are not waste in this country which would be waste in England, such as cutting timber, and modes of using the soil, when done in accordance with the usual methods of good husbandry in the neighborhood: See *Drown v. Smith*, 52 Me. 141; *Keeler v. Eastman*, 11 Vt. 293; *Gardiner v. Dering*, 1 Paige, 573; *Livingston v. Reynolds*, 26 Wend. 115; *Morehouse v. Cotheal*, 22 N. J. Eq. 521; *Lynn's Appeal*, 31 Pa. St. 44; 72 Am. Dec. 721; *McCullough v. Irvine*, 13 Pa. St. 438; *Crawley v. Timberlake*, 2 Ired. Eq. 460; *Alexander v. Fisher*, 7 Ala. 514.

² *Pulteney v. Shelton*, 5 Ves. 260, note; *Twort v. Twort*, 16 Ves. 128; *Hole v. Thomas*, 7 Ves. 589; *Smallman v. Onions*, 3 Brown Ch. 621; *Powys v. Blagrove*, 4 De Gex, M. & G. 448; *Kekewich v. Marker*, 3 Macn. & G. 311; *Hawley v. Clowes*, 2 Johns. Ch. 122; *Kane v. Vanderburgh*, 1 Johns. Ch. 11; *Watson v. Hunter*, 5 Johns. Ch. 169; 9 Am. Dec. 295; *Duvall v. Waters*, 1 Bland, 569, 576; 18 Am. Dec. 350; *Hill v. Bowie*, 1 Bland, 593; *Markham v. Howell*, 33 Ga. 508; *Peak v. Hayden*, 3 Bush, 125; *Northrup v. Trask*, 39 Wis. 515; *Mut. L. Ins. Co. v. Bigler*, 79 N. Y. 568; *Vandemark v. Schoonmaker*, 9 Hun, 16; *Williams v. Peabody*, 8 Hun, 271; *Le Roy v. Wright*, 4 Saw. 530 (plaintiff's legal title disputed); [*Brock v. Dole*, 66 Wis. 142; *Lavenson v. Standard Soap Co.*, 80 Cal. 245; 13 Am. St. Rep. 147.]

³ *Garth v. Cotton*, 1 Ves. Sr. 524, 556; 1 Dick. 183; 1 Lead. Cas. Eq., 4th Am. ed., 955; *Perrot v. Perrot*, 3 Atk. 94; *Robinson v. Litton*, 3 Atk. 209; *Farrant v. Lovel*, 3 Atk. 723; *Davis v. Leo*, 6 Ves. 784, 787; *Onslow*

v. —, 16 Ves. 173; *Pratt v. Brett*, 2 Madd. 62; *Clement v. Wheeler*, 25 N. H. 361; *Attaquin v. Fish*, 5 Met. 140, 147; *Kane v. Vanderburgh*, 1 Johns. Ch. 11, 12; *Douglass v. Wiggins*, 1 Johns. Ch. 435; *Kidd v. Denison*, 6 Barb. 10, 15; *Varles v. Varles*, 3 Sand. Ch. 601; *Ware v. Ware*, 6 N. J. Eq. 117; *Duvall v. Waters*, 1 Bland, 569, 576; 18 Am. Dec. 350; *Lewis v. Christian*, 40 Ga. 187; *Smith v. Rome*, 19 Ga. 89; *Lyon v. Hunt*, 11 Ala. 295, 305; 46 Am. Dec. 216; [*University v. Tucker*, 31 W. Va. 621; *Jones v. Britton*, 102 N. C. 166; and see *Crowe v. Wilson*, 65 Md. 479; 57 Am. Rep. 343.]

⁴ *Garth v. Cotton*, 1 Ves. Sr. 524, 556; 1 Dick. 183; 1 Lead. Cas. Eq. 955; *Robinson v. Litton*, 3 Atk. 209; *Farrant v. Lovel*, 3 Atk. 723; *Stansfield v. Habergham*, 10 Ves. 273, 277; *Humphreys v. Harrison*, 1 Jacob & W. 581; *Wallington v. Taylor*, 1 N. J. Eq. 314, 318; *Brashear v. Macey*, 3 J. J. Marsh. 89. At the suit of the vendee against the vendor under a land contract: *Smith and Fleek's Appeal*, 69 Pa. St. 474. Between mortgagee and mortgagor, to restrain waste of the mortgaged premises: *Brady v. Waldron*, 2 Johns. Ch. 148; *Robinson v. Preswick*, 3 Edw. Ch. 246; *Ensign v. Colburn*, 11 Paige, 503; *Phoenix v. Clark*, 6 N. J. Eq. 447; *Nelson v. Pinegar*, 30 Ill. 473; *Bunker v. Locke*, 15 Wis. 635; *Robinson v. Russell*, 24 Cal. 467; *Cooper v. Davis*, 15 Conn. 556; *State v. North. etc R'y*, 18 Md. 193; *Parsons v. Hughes*, 12 Md. 1; and in other cases of injuries analogous to waste: *Litka v. Wilcox*, 39 Mich. 94; *Patton v. Moore*, 16 W. Va. 428; 37 Am. Rep. 789; *Frank v. Brunneimann*, 8 W. Va. 462; [see also *ante*, § 1345, note.]

the waste itself is entirely "equitable," — that is, where, by the terms of the will, deed, settlement, or lease, the tenant holds the land "without impeachment of waste."¹ An injunction will also be granted to restrain threatened waste, although none has actually been committed.²

§ 1349. **Nuisance — Public.** — A court of equity has jurisdiction to restrain existing or threatened public nuisances by injunction, at the suit of the attorney-general in England, and at the suit of the state, or the people, or municipality, or some proper officer representing the commonwealth, in this country. A public nuisance must be established by clear evidence, before the preventive remedy will be granted.³ A public nuisance will also be restrained at the suit of a private person who suffers therefrom a special and particular injury distinct from that suffered by him in common with the public at large; but this injury must be real, and such that the legal remedy of damages would not be adequate.⁴

¹ Garth v. Cotton, *supra*; Vane v. Lord Barnard, 2 Vern. 738; Prec. Ch. 454; Rolt v. Lord Somerville, 2 Eq. Cas. Abr. 759; Aston v. Aston, 1 Ves. Sr. 264; Burges v. Lamb, 16 Ves. 174, 185; Day v. Merry, 16 Ves. 375; Abraham v. Bubb, 2 Swanst. 172; Morris v. Morris, 15 Sim. 505; Wellesley v. Wellesley, 6 Sim. 497; Micklethwait v. Micklethwait, 1 De Gex & J. 504, 519; Kekewich v. Marker, 3 Macn. & G. 311; Att'y-Gen. v. Duke of Marlborough, 3 Madd. 498, 538; Sowerby v. Fryer, L. R. 8 Eq. 417; Birch-Wolfe v. Birch, L. R. 9 Eq. 683; Bubb v. Yelverton, L. R. 10 Eq. 465; Clement v. Wheeler, 25 N. H. 361.

² Rodgers v. Rodgers, 11 Barb. 595; Duvall v. Waters, 1 Bland, 569, 576; 18 Am. Dec. 350; Loudon v. Warfield, 5 J. J. Marsh. 196; White Water etc. Co. v. Comegys, 2 Ind. 469; [Dooley v. Stringham, 4 Utah, 107; Sheridan v. McMullen, 12 Or. 150.]

³ Att'y-Gen. v. Cleaver, 18 Ves. 211, 217; Att'y-Gen. v. Forbes, 2 Mylne & C. 123; Earl of Ripon v. Hobart, 3 Mylne & K. 169, 179; Att'y-Gen. v. Great East. R'y, L. R. 6 Ch. 572; Att'y-Gen. v. Eau Claire, 37 Wis. 400; State v. Eau Claire, 40 Wis. 533;

Rochester v. Erickson, 46 Barb. 92; Coast Line R. R. v. Cohen, 50 Ga. 451; Pennsylvania v. Wheeling etc. Bridge Co., 13 How. 518; Miss. & Mo. R. R. v. Ward, 2 Black, 485; Att'y-Gen. v. Cohoes Co., 6 Paige, 133; 29 Am. Dec. 755; Mohawk Bridge Co. v. Utica etc. R. R., 6 Paige, 554; People v. Third Ave. R. R., 45 Barb. 63; Hinchman v. Paterson etc. R. R., 17 N. J. Eq. 75; 86 Am. Dec. 252; Craig v. People, 47 Ill. 487; [Att'y-Gen. v. Shrewsbury etc. Co., 21 Ch. Div. 752; Health Dept. of New York v. Purdon, 99 N. Y. 238; 52 Am. Rep. 22; Rozell v. Andrews, 103 N. Y. 150; Att'y-Gen. v. Jamaica Pond Aqueduct, 133 Mass. 363; Att'y-Gen. v. Williams, 140 Mass. 329; 54 Am. Rep. 468; Town of Burlington v. Schwarzman, 52 Conn. 181; 52 Am. Rep. 571; City of New Castle v. Raney, 130 Pa. St. 546; Harlan & H. Co. v. Paschall, 5 Del. Ch. 435; Ravenswood v. Flemings, 22 W. Va. 52; 46 Am. Rep. 485; City of Demopolis v. Webb, 87 Ala. 659; State v. Carpenter, 68 Wis. 165; 60 Am. Rep. 848; People v. Gold Run etc. Co., 66 Cal. 138; 56 Am. Rep. 80.]

⁴ Soltan v. De Held, 2 Sim., N. S., 133; Att'y-Gen. v. Sheffield Gas Co.,

§ 1350. **Private Nuisance — When Restrained.** — It is a well-settled doctrine that equity will restrain a private nuisance at the suit of the injured party. This remedy will not, however, be granted in every instance of alleged nuisance. The present or threatened injury must be real, not trifling, transient, or temporary; it must be one for which, either on account of its essentially irreparable nature, or its repetition or continuance, the legal remedy of damages is inadequate. The title of the plaintiff must also be clear, or at least not subject to any substantial doubt or question. The equitable jurisdiction is therefore based upon the notion of restraining irreparable mischief, or of preventing vexatious litigation, or a multiplicity of suits.¹

3 De Gex, M. & G. 304; Att'y-Gen. v. Cambridge Gas Co., L. R. 4 Ch. 71, 80; Att'y-Gen. v. Gee, L. R. 10 Eq. 131; Original Hartlepool etc. Co. v. Gibb, L. R. 5 Ch. Div. 713; Pettibone v. Hamilton, 40 Wis. 402; Coast Line R. R. v. Cohen, 50 Ga. 451; Thayer v. New Bedford R. R., 125 Mass. 253; Osborne v. Brooklyn etc. R. R., 5 Blatchf. 366; Hartshorn v. South Reading, 3 Allen, 501; Central Bridge Corp. v. Lowell, 4 Gray, 474; Rowe v. Granite Bridge Corp., 21 Pick. 344; Bigelow v. Hartford Bridge Co., 14 Conn. 565; 36 Am. Dec. 592; Frink v. Lawrence, 20 Conn. 117; 50 Am. Dec. 274; Milhau v. Sharp, 27 N. Y. 611; 84 Am. Dec. 314; Knox v. New York, 55 Barb. 404; Smith v. Lockwood, 13 Barb. 209; Mayor etc. v. Baumberger, 7 Rob. (N. Y.) 219; Hudson River R. R. v. Loeb, 7 Rob. (N. Y.) 418; Manhattan etc. Co. v. Barker, 7 Rob. (N. Y.) 523; Peck v. Elder, 3 Sand. 126; Corning v. Lowerre, 6 Johns. Ch. 439; Sparhawk v. Union Pass. R'y, 54 Pa. St. 401; Black v. Phila. etc. R. R., 58 Pa. St. 249; Philadelphia v. Collins, 68 Pa. St. 106; Buck Mt. etc. Co. v. Lehigh etc. Co., 50 Pa. St. 91, 99; 88 Am. Dec. 534; Higbee v. Camden etc. R. R., 19 N. J. Eq. 276; Allen v. Board of Freeholders, 13 N. J. Eq. 68, 74; Zabriskie v. Jersey City etc. R. R., 13 N. J. Eq. 314; Delaware etc. R. R. v. Stump, 8 Gill & J. 479; 29 Am. Dec. 561; Hamilton v. Whitridge,

11 Md. 128; 69 Am. Dec. 184; Savannah etc. R. R. v. Shiels, 33 Ga. 601; Columbus v. Jaques, 30 Ga. 506; Green v. Oakes, 17 Ill. 249; Smith v. Bangs, 15 Ill. 399; Ewell v. Green, wood, 26 Iowa, 377; Sheboygan v. Sheboygan etc. R. R., 21 Wis. 667; [Callanan v. Gilman, 147 N. Y. 360; 1 Am. St. Rep. 831; Flynn v. Taylor, 127 N. Y. 596; Potter v. Howe, 141 Mass. 357; Pearson v. Allen, 151 Mass. 79; 21 Am. St. Rep. 426; Needham v. N. Y. & N. E. R. R., 152 Mass. 61; Gorton v. Tiffany, 14 R. I. 95; Bosworth v. Norman, 14 R. I. 521; Lipincott v. Lasher, 44 N. J. Eq. 120; Van Wagenen v. Cooney, 45 N. J. Eq. 24; Schall v. Nusbaum, 56 Md. 512; Georgia Chemical etc. Co. v. Colquitt, 72 Ga. 172; Hesing v. Scott, 107 Ill. 600; Bailey v. Culver, 84 Mo. 531; Cummings v. City of St. Louis, 90 Mo. 259; Marini v. Graham, 67 Cal. 130; San José Ranch Co. v. Brooks, 74 Cal. 463; Hargro v. Hodgdon, 89 Cal. 623.]

¹ According to the modern decisions, a mere denial of the plaintiff's title in defendant's pleading will not prevent an injunction; but if the plaintiff's title is really disputed, or is in any real doubt, it must first be established by a verdict, before equity will interfere with its preventive relief: Att'y-Gen. v. Nichol, 16 Ves. 338, 342; Wynstanley v. Lee, 2 Swanst. 333, 335; Fishmongers' Co. v. East India Co., 1

§ 1351. Same. Instances—Violations of Easements.—

Among the nuisances, or wrongs in the nature of nuisances, which equity readily prevents by injunction are those which consist in the interference with, disturbance, or destruction, actual or threatened, of easements and ser-

Dick. 163; Blakemore v. Glamorgan-shire Canal Navigation, 1 Mylne & K. 154; Squire v. Campbell, 1 Mylne & C. 459, 465, 467; Taylor v. Davis, 3 Beav. 388, note; Whittaker v. Howe, 3 Beav. 383, 387, 395, note; Spencer v. London etc. R'y, 8 Sim. 193; Soltan v. De Held, 2 Sim., N. S., 133; Wood v. Sutcliffe, 2 Sim., N. S., 163; Walter v. Selfe, 4 De Gex & S. 315; Bostock v. North Staffordshire R'y, 5 De Gex & S. 584; St. Helen's Smelting Co. v. Tipping, 11 H. L. Cas. 642; Broadbent v. Imperial Gas Co., 7 De Gex, M. & G. 436, 461, 462; 7 H. L. Cas. 600; Att'y-Gen. v. Sheffield Gas. etc. Co., 3 De Gex, M. & G. 304; Crossley v. Lightowler, L. R. 2 Ch. 478; Robson v. Whittingham, L. R. 1 Ch. 442; Att'y-Gen. v. Cambridge etc. Gas Co., L. R. 4 Ch. 71; Goodson v. Richardson, L. R. 9 Ch. 221, 223, 226; Stanford v. Hurlstone, L. R. 9 Ch. 116, 118, 119; Inghald v. Robiunson, L. R. 4 Ch. 388, 395, 397; London etc. R'y v. Lancashire etc. R'y, L. R. 4 Eq. 174, 178; Mayor v. Cardiff Water Co., 4 De Gex & J. 596, 597-599; Elmhirst v. Spencer, 2 Macn. & G. 45, 50; Parker v. Winnipisiogee etc. Co., 2 Black, 545; Barnes v. Hathorn, 54 Me. 124; Coe v. Winnepisiogee etc. Co., 37 N. H. 254, 264; Eastman v. Amoskeag etc. Co., 47 N. H. 71; Burnham v. Kempton, 44 N. H. 78, 90; Bassett v. Salisbury etc. Co., 47 N. H. 426; Wilcox v. Wheeler, 47 N. H. 488; Wesson v. Washburn Iron Co., 13 Allen, 95; 90 Am. Dec. 181; Rhode Island etc. Bank v. Hawkins, 6 R. I. 198; Falls Village etc. Co. v. Tibbetts, 31 Conn. 165; Fish v. Dodge, 4 Denio, 311; 47 Am. Dec. 254; Catlin v. Valentine, 9 Paige, 575; 38 Am. Dec. 567; Brady v. Weeks, 3 Barb. 157; Auburn etc. Co. v. Douglass, 12 Barb. 553; Niagara Falls etc. Co. v. Great Western R'y, 39 Barb. 212; Gilbert v. Mickle, 4 Sand. Ch. 357; Peck v. Elder, 3 Sand. 126; Cleveland v. City Gas Light Co., 20 N. J. Eq. 201; Ross v. Butler, 19 N. J. Eq. 294; 97 Am. Dec.

654; Davidson v. Isham, 9 N. J. Eq. 186; Wolcott v. Melick, 11 N. J. Eq. 204; 66 Am. Dec. 790; Smith v. Cummings, 2 Pars. Cas. 92; Cunningham v. Rome R. R., 27 Ga. 499; Cotton v. Miss. etc. Co., 19 Minn. 497; Carlisle v. Cooper, 21 N. J. Eq. 576, 579, 580, 583-585, 587; Att'y-Gen. v. Steward, 21 N. J. Eq. 340; 20 N. J. Eq. 415; Holsman v. Boiling Spring etc. Co., 14 N. J. Eq. 335, 342-345; Shimer v. Morris C. Co., 27 N. J. Eq. 363; Nat. Docks R'y v. Central R. R., 32 N. J. Eq. 755; Central R. R. v. Pa. R. R., 31 N. J. Eq. 475; Le Roy v. Wright, 4 Saw. 530; Perry v. Parker, 1 Wood. & M. 280, 282; Hart v. Mayor etc. of Albany, 3 Paige, 213; Tuolumne Water Co. v. Chapman, 8 Cal. 392; Hicks v. Michael, 15 Cal. 107, 116; Levaroni v. Miller, 34 Cal. 231; 91 Am. Dec. 692; Olmsted v. Loomis, 9 N. Y. 423; Hacker v. Barton, 84 Ill. 313; Robinson v. Baugh, 31 Mich. 290. [See also Cooper v. Crabtree, 20 Ch. Div. 590; Robinson v. Kelvert, 41 Ch. Div. 88; Balt. & P. R. R. Co. v. Baptist Church, 108 U. S. 317; Westbrook Mfg. Co. v. Warren, 77 Me. 437; Milan Steam Mills v. Hickey, 59 N. H. 241; Kenney v. Consumers' Gas Co., 142 Mass. 417; Westcott v. Middleton, 43 N. J. Eq. 478; McCaffrey's Appeal, 105 Pa. St. 253; Woodyear v. Schaefer, 57 Md. 1; 40 Am. Rep. 419; Blaine v. Brady, 64 Md. 373; Kennerty v. Etiwan Phosphate Co., 17 S. C. 411; 43 Am. Rep. 607; Kingsbury v. Flowers, 65 Ala. 479; 39 Am. Rep. 14, and note; Rouse v. Martin, 75 Ala. 510; 51 Am. Rep. 463, and note; Learned v. Hunt, 63 Miss. 373; Wilmarth v. Woodcock, 66 Mich. 331; Ronayne v. Loranger, 66 Mich. 373; Turner v. Hart, 71 Mich. 128; 15 Am. St. Rep. 243; Denner v. Chicago, M., & St. P. R. R. Co., 57 Wis. 218; Walts v. Foster, 12 Or. 247; Daniels v. Keokuk Water Works, 61 Iowa, 549; Learned v. Castle, 78 Cal. 454.]

vitues, whether created by grant or by covenant, or resulting from user. Some of the most common forms of such injuries which equity enjoins are the obstruction of ancient lights in England, and rights of air or of prospect, by erections of any kind; the removal of the lateral support of land by excavations; the interference with water rights by diverting or polluting streams. In fact, every disturbance of an easement or servitude, existing or threatened, will be thus restrained, whenever from the essential nature of the injury, or from its continuous character, the legal remedy is inadequate.¹ No sufficient

¹ The jurisdiction, where equitable servitudes have been impressed upon land by covenants in deeds of conveyance, etc., has already been examined: See *ante*, § 1342.

Interfering with easement of light and air: Att'y-Gen. v. Nichol, 16 Ves. 338; Wynstanley v. Lee, 2 Swanst. 333; Back v. Stacy, 2 Russ. 121; Tapling v. Jones, 11 H. L. Cas. 290; Aynsley v. Glover, L. R. 10 Ch. 283; Hackett v. Baiss, L. R. 20 Eq. 494; Smith v. Smith, L. R. 20 Eq. 500; Ecclesiastical Comm'rs v. Kino, L. R. 14 Ch. Div. 213; Thruston v. Minke, 32 Md. 487; Robeson v. Pittenger, 2 N. J. Eq. 57; 32 Am. Dec. 412; Irwin v. Dixon, 9 How. 10. [See especially Burke v. Smith, 69 Mich. 380.]

Removal of lateral support of land: Hunt v. Peake, Johns. 705; 6 Jur., N. S., 1071; [Trowbridge v. True, 52 Conn. 190; 52 Am. Rep. 579.]

Interfering with water rights by diverting streams, polluting streams, etc.: The cases on this subject are very numerous. The jurisdiction is exercised alike against private persons and against public bodies, municipalities, boards, commissioners, etc.: Lane v. Newdigate, 10 Ves. 192; Chalk v. Wyatt, 3 Mer. 688; Att'y-Gen. v. Birmingham, 4 Kay & J. 528; Wood v. Sutcliffe, 2 Sim., N. S., 163; Lingwood v. Stowmarket Co., L. R. 1 Eq. 77, 336; Att'y-Gen. v. Richmond, L. R. 2 Eq. 306; Goldsmid v. Tunbridge etc. Comm'rs, L. R. 1 Ch. 349; 1 Eq. 161; Clowes v. Staffordshire etc. Co., L. R. 8 Ch. 125; Att'y-Gen. v. Guardians, 1 R. 20 Ch. Div. 595, 604-610; Metropolitan Board v. London etc.

R'y, L. R. 17 Ch. Div. 246; Att'y-Gen. v. Birmingham Board, L. R. 17 Ch. Div. 685, 691; Pugh v. Golden V. R'y, L. R. 15 Ch. Div. 330; Glas-sop v. Heston etc. Board, L. R. 12 Ch. Div. 102, 109; Newington etc. Board v. Cottingham etc. Board, 12 Ch. Div. 725, 734; West Cumberland etc. Co. v. Kenyon, L. R. 11 Ch. Div. 782; 6 Ch. Div. 773; Taylor v. Corporation of St. Helens, L. R. 6 Ch. Div. 264; Flower v. Local Board etc., L. R. 5 Ch. Div. 347, 352; Penning-ton v. Brinsopp etc. Co., L. R. 5 Ch. Div. 769; Att'y-Gen. v. Great East. R'y, L. R. 6 Ch. 572; Att'y-Gen. v. Leeds Corporation, L. R. 5 Ch. 583; Att'y-Gen. v. Colney Hatch etc. Asylum, L. R. 4 Ch. 146; Baxendale v. McMurray, L. R. 2 Ch. 790; Crossley v. Lightowler, L. R. 2 Ch. 478; Nuneaton L. Board v. General Sewage Co., L. R. 20 Eq. 127; Compton v. Lea, L. R. 19 Eq. 115, 121; Holt v. Corporation of Rochdale, L. R. 10 Eq. 354, 361; Carlisle v. Cooper, 21 N. J. Eq. 568, 579, 583, 585; Att'y-Gen. v. Steward, 21 N. J. Eq. 340; 20 N. J. Eq. 415; Shimer v. Morris Canal Co., 27 N. J. Eq. 363; Hol-sman v. Boiling Spring etc. Co., 14 N. J. Eq. 335; Jacobs v. Allard, 42 Vt. 303; 1 Am. Rep. 331; Bull v. Valley Falls Co., 8 R. I. 42; Frink v. Lawrence, 20 Conn. 117; 50 Am. Dec. 274; Fisk v. Wilber, 7 Barb. 395; Pollitt v. Long, 58 Barb. 20; Olmsted v. Loomis, 6 Barb. 152; Gardner v. Newburgh, 2 Johns. Ch. 162, 165; 7 Am. Dec. 526; Van Bergen v. Van Bergen, 2 Johns. Ch. 272; 3 Johns. Ch. 282; 8 Am. Dec. 511; Reid v.

notion can be obtained of the scope and efficiency of this injunctive jurisdiction, except from an actual examination

Gifford, Hopk. Ch. 416; Hammond v. Fuller, 1 Paige, 197; Arthur v. Case, 1 Paige, 447; Belknap v. Trimble, 3 Paige, 577, 600; Babcock v. New Jersey etc. Co., 20 N. J. Eq. 296; Spangler's Appeal, 64 Pa. St. 387; Sanderson v. Pennsylvania Coal Co., 86 Pa. St. 401; 27 Am. Rep. 711; Lewis v. Stein, 16 Ala. 214; 50 Am. Dec. 177; Burden v. Stein, 27 Ala. 104; 62 Am. Dec. 758; [Fletcher v. Bealey, 28 Ch. Div. 688; Meyer v. Phillips, 97 N. Y. 485; 49 Am. Rep. 533; Smith v. City of Rochester, 92 N. Y. 473; 44 Am. Rep. 393; Chapman v. City of Rochester, 110 N. Y. 273; 6 Am. St. Rep. 366; Mudge v. Salisbury, 110 N. Y. 417; McKee v. Delaware etc. Canal Co., 125 N. Y. 353; 21 Am. St. Rep. 740; Lockwood Co. v. Lawrence, 77 Me. 297; 52 Am. Rep. 763; Perkins v. Foye, 60 N. H. 496; Canfield v. Andrews, 54 Vt. 1; 41 Am. Rep. 828; Middlesex Co. v. Lowell, 149 Mass. 509; Proprietors etc. v. Braintree etc. Co., 149 Mass. 480; Powers's Appeal, 125 Pa. St. 175; 11 Am. St. Rep. 882 (acquiescence in the nuisance); Switzer v. McCulloch, 76 Va. 777; Ulbricht v. Eufaula Water Co., 86 Ala. 537; 11 Am. St. Rep. 72; Clifton Iron Co. v. Dye, 87 Ala. 468; Stone v. Roscommon Lumber Co., 60 Mich. 24; Koopman v. Blodgett, 70 Mich. 610; 14 Am. St. Rep. 527; Dayton v. Drainage Comm'rs, 123 Ill. 271; Kimberly v. Hewitt, 75 Wis. 371; Lawson v. Menasha Wooden-ware Co., 59 Wis. 393; 48 Am. Rep. 523; Moore v. Chicago etc. R. R. Co., 75 Iowa, 263; Fuller v. Swan R. etc. Min. Co., 12 Col. 12; Haines v. Hall, 17 Or. 174. But see Bradfield v. Dewell, 48 Mich. 9.]

The California reports are so rich in most instructive cases that I may properly cite freely from them: Fitzgerald v. Urton, 5 Cal. 308; Burdge v. Underwood, 6 Cal. 45; Tenney v. Miners' D. Co., 7 Cal. 335; Tuolumne W. Co. v. Chapman, 8 Cal. 392; Weimer v. Lowery, 11 Cal. 104; Boggs v. Merced M. Co., 14 Cal. 279, 379; Henshaw v. Clark, 14 Cal. 460; Hicks v. Michael, 15 Cal. 107; Weaver v. Eureka Lake Co., 15 Cal. 271; Hicks

v. Compton, 18 Cal. 206; Bensley v. Mt. Lake W. Co., 13 Cal. 306; 73 Am. Dec. 575; Logan v. Driscoll, 19 Cal. 623; 81 Am. Dec. 90; McLaughlin v. Kelly, 22 Cal. 212; Kittle v. Pfeiffer, 22 Cal. 484; Rupley v. Welch, 23 Cal. 452; Robinson v. Russell, 24 Cal. 467; Wixon v. Bear River etc. Co., 24 Cal. 367; 85 Am. Dec. 69; Leach v. Day, 27 Cal. 643; Ferrea v. Knipe, 28 Cal. 340; 87 Am. Dec. 128; Grigsby v. Burtnett, 31 Cal. 406; More v. Massini, 32 Cal. 590; Hill v. Smith, 32 Cal. 166; Levaroni v. Miller, 34 Cal. 231; 91 Am. Dec. 692; Yolo Co. v. Sacramento, 36 Cal. 193; Grigsby v. Clear Lake W. Co., 40 Cal. 396; Gregory v. Nelson, 41 Cal. 278; Cowell v. Martin, 43 Cal. 605; Cave v. Crafts, 53 Cal. 135; Robinson v. Black Diamond Coal Co., 50 Cal. 460; 57 Cal. 412; 40 Am. Rep. 118; and see the very important case of Woodruff v. North Bloomfield etc. M. Co., 8 Saw. 628, to enjoin several hydraulic mining companies from discharging their mining *débris* into a river, by which the lands of the adjoining proprietors below were destroyed, and the navigation of the river was impeded. Several of these California cases are very instructive with respect to injunctions against trespass. [See also Johnson v. Sup. Ct., 65 Cal. 567; People v. Gold Run etc. Co., 66 Cal. 138; 56 Am. Rep. 80; Moore v. Clear Lake W. W., 68 Cal. 146; especially Lux v. Haggin, 69 Cal. 276; Frey v. Lowden, 70 Cal. 550; Heilbron v. Canal Co., 75 Cal. 426; 7 Am. St. Rep. 183; County of Yuba v. Cloke, 79 Cal. 239; Perego v. McKissick, 79 Cal. 572.]

Miscellaneous examples — Encroachments upon public parks, squares, and the like: Corning v. Lowerre, 6 Johns. Ch. 439; Hills v. Miller, 3 Paige, 254; 24 Am. Dec. 218; Trustees of Watertown v. Cowen, 4 Paige, 510; [Wheeler v. Bedford, 54 Conn. 244; and see Cummings v. City of St. Louis, 90 Mo. 259.]

Corporations encroaching upon the rights of adjoining proprietors: Coats v. Clarence R'y, 1 Russ. & M. 181; Bonaparte v. Camden etc. R. R., Bald. 205, 231; Mohawk etc. R. R. v. Archer, 6 Paige, 83; Drake v.

of the numerous and varying instances in which it has been exercised by the modern decisions.

Hudson River R. R., 7 Barb. 508; Att'y-Gen. v. Tudor Ice Co., 104 Mass. 239; 6 Am. Rep. 227; Morris etc. R. R. v. Prudden, 20 N. J. Eq. 530.

Disturbance of a burying-ground: Beatty v. Kurtz, 2 Pet. 566, 584; [Davidson v. Reed, 111 Ill. 167; 53 Am. Rep. 613.]

Ring of church bells: Soltan v. De Held, 2 Sim., N. S., 133; [Davis v. Sawyer, 133 Mass. 289; 43 Am. Rep. 519.]

[Obstruction to right of way: Hacke's Appeal, 101 Pa. St. 245; Russell v. Napier, 80 Ga. 77; Oswald v. Wolf, 129 Ill. 200, and cases cited; Swan v. Burlington etc. R. R. Co., 72 Iowa, 650; Stallard v. Cushing, 76 Cal. 472.

Easement of drainage: Sanderlin v. Baxter, 76 Va. 299; 44 Am. Rep. 165; Nininger v. Norwood, 72 Ala. 277; 47 Am. Rep. 412; Farris v. Dudley, 78 Ala. 124; 56 Am. Rep. 24.]

Illustrations of various other nuisances: Vernon v. Vestry of St. James, L. R. 16 Ch. Div. 449; Hedley v. Bates, L. R. 13 Ch. Div. 498; Sturges v. Bridgman, L. R. 11 Ch. Div. 852; Theed v. Debenham, L. R. 2 Ch. Div. 165; Broder v. Saillard, L. R. 2 Ch. Div. 692; Umfreville v. Johnson, L. R. 10 Ch. 580; Goodson v. Richardson, L. R. 9 Ch. 221; Att'y-Gen. v. Terry, L. R. 9 Ch. 423; Ball v. Ray, L. R. 8 Ch. 467; Thorpe v. Brumfitt, L. R. 8 Ch. 650; Gaunt v. Fynney, L. R. 8 Ch. 8; Hext v. Gill, L. R. 7 Ch. 699; Staigh v. Burn, L. R. 5 Ch. 163; Inchbald v. Robinson, L. R. 4 Ch. 388; Att'y-Gen. v. Mid-Kent R'y, L. R. 3 Ch. 100; Clarke v. Clark, L. R. 1 Ch. 16; Tipping v. St. Helen's etc. Co., L. R. 1 Ch. 66; Ivimey v. Stocker, L. R. 1 Ch. 396; Smith v. Smith, L. R. 20 Eq. 500; Fenwick v. East London R'y, L. R. 20 Eq. 544; Allen v. Martin, L. R. 20 Eq. 462; Mott v. Shoolbred, L. R. 20 Eq. 22; Dyers's Co. v. King, L. R. 9 Eq. 438; Walker v. Brewster, L. R. 5 Eq. 25; Beadel v. Perry, L. R. 3 Eq. 465; Crump v. Lambert, L. R. 3 Eq. 409; Martin v. Headon, L. R. 2 Eq. 425, 434; Dent v. Auction Mart Co., L. R. 2 Eq. 238, 244, 246, 247; Broadbent v. Imperial Gas Co., 7 De Gex, M. &

G. 436, 460, 462; 7 H. L. Cas. 600; St. Helen's etc. Co. v. Tipping, 11 H. L. Cas. 642; Watson v. Sutherland, 5 Wall. 74; Parker v. Winnipiseogee etc. Co., 2 Black, 545; Cadigan v. Brown, 120 Mass. 493; Richmond Mfg. Co. v. Atlantic etc. Co., 10 R. I. 106; 14 Am. Rep. 658; Duncan v. Hayes, 22 N. J. Eq. 25; Meigs v. Lister, 23 N. J. Eq. 199; O'Riley v. McChesney, 3 Lans. 278; Snow v. Williams, 16 Hun, 468; Rothery v. N. Y. Rubber Co., 24 Hun, 172; Seaman v. Lee, 10 Hun, 607; Beach v. Elmira, 22 Hun, 158; Henderson v. N. Y. Cent. R. R., 78 N. Y. 423; Lynch v. Mayor etc., 76 N. Y. 60; 32 Am. Rep. 271; Adams v. Popham, 76 N. Y. 410; Campbell v. Seaman, 63 N. Y. 568; 20 Am. Rep. 567; Olmsted v. Loomis, 9 N. Y. 423; Davis v. Lambertson, 56 Barb. 480; Owen v. Phillips, 73 Ind. 284; Wahle v. Reinbach, 76 Ill. 322; Greene v. Nunnemacher, 36 Wis. 50; Pettibone v. Hamilton, 40 Wis. 402; Lewis v. Stein, 16 Ala. 214; 50 Am. Dec. 177; Ex parte Martin, 13 Ark. 198; 58 Am. Dec. 321; Lamborn v. Covington Co., 2 Md. Ch. 409. [See also Ballard v. Tomlinson, 29 Ch. Div. 115; Jenkins v. Jackson, 40 Ch. Div. 76 (nuisance to lessee of rooms from dancing on upper floor); Reinhardt v. Mentaste, 42 Ch. Div. 684 (stove causing damage to adjacent wine-cellar); Cogswell v. N. Y. etc. R. R. Co., 100 N. Y. 10; 57 Am. Rep. 701 (smoke); Williams v. Osborne, 40 N. J. Eq. 235 (unpleasant odors); Perrin v. Taylor, 43 N. J. Eq. 128; Appeal of Penn. Lead Co., 96 Pa. St. 116; 42 Am. Rep. 534; Haugh's Appeal, 102 Pa. St. 42; 48 Am. Rep. 193; Snyder v. Cabell, 29 W. Va. 48 (skating-rink); Medford v. Levy, 31 W. Va. 649; 13 Am. St. Rep. 887 (malicious annoyance of neighbors); West v. Atlantic etc. R. R., 72 Ga. 208; Littleton v. Fritz, 65 Iowa, 488; 54 Am. Rep. 19; Thebner v. Cal. St. R. R. Co., 66 Cal. 171; Sullivan v. Royer, 72 Cal. 248; 1 Am. St. Rep. 51 (soot); Cumberland Telephone etc. Co. v. U. El. R'y Co., 42 Fed. Rep. 273, and cases cited (a telephone company cannot, in the present state of science, enjoin the operation of an electric railway to prevent dam-

§ 1352. **Patent Rights and Copyrights.**—When the existence of a patent right or of a copyright is conceded, or has been established by an action at law, the jurisdiction of equity to restrain an infringement is too well settled and familiar to require the citation of authorities in its support. From the nature of the right and of the wrong,—the violation being a continuous act,—the legal remedy is necessarily inadequate. The ordinary form of relief is an accounting of profits and an injunction in equity; indeed, the action at law is seldom resorted to, except for the purpose of establishing the validity of the patent or copyright by the verdict of a jury when it is really contested. Under the constitution of the United States, the cognizance of suits for the infringement of these rights belongs exclusively to the federal courts.¹

§ 1353. **Literary Property as Distinct from Copyright.**—In analogy to the protection of copyrights, a jurisdiction has become well established by modern decisions to restrain the invasion or piracy of literary property in the product of intellectual labor, which still remains in the form of manuscript, or which, if printed, has not been published, and over which, as a consequence, no statutory copyright has been obtained; and to restrain an invasion of the similar right which an artist has in his pictures, and other original works of his creative art. This jurisdiction belongs to the state courts. It will be exercised to restrain the unauthorized publication of *unpublished* manuscript or printed matter in violation of the rights of the person entitled thereto;² the unauthorized publica-

ages incidentally sustained by the escape of electricity from its rails); *New York C. & H. R. R. Co. v. City of Rochester*, 127 N. Y. 591 (discharge of sewage); *Rothery v. N. Y. Rubber Co.*, 90 N. Y. 30 (mandatory injunction to compel the lowering of a dam).]

It is only by examining a large number of decisions that any adequate notion can be obtained of the wide extent of this jurisdiction, as well as of its limitations. These cases show that

the jurisdiction is not exercised merely in exceptional cases, as might be inferred from some judicial language.

¹ *Hogg v. Kirby*, 3 Ves. 215, 223; *Nicol v. Stockdale*, 3 Swaust. 687; *Bacon v. Jones*, 4 Mylne & C. 433, 436; *Saunders v. Smith*, 3 Mylne & C. 711, 728; *Martin v. Wright*, 6 Sim. 297. See *Curtis on Patent and Copyrights*, and *Webster's Patent Cases*.

² *Duke of Queensberry v. Shebbeare*, 2 Eden, 329; *Pope v. Curl*, 2 Atk. 342; *Southey v. Sherwood*, 2 Mer. 435,

tion, performance, representation on the stage, or other similar uses of dramatic compositions which have not been "published" by the author or proprietor;¹ the unauthorized publication, delivery, or other like use of lectures which have been delivered by the author, but not otherwise published;² the unauthorized making, sale, or exhibition of copies of paintings, engravings, and other works of art, even though the originals may have been publicly exhibited;³ and the unauthorized publication of private letters, whether on literary topics, or on matters of private business, friendship, or family.⁴

§ 1354. **Trade-marks.**—Somewhat akin to the protection of patent and copy rights is that which courts of equity give, by means of the injunction, to the peculiar species of right arising from the adoption and use of "trade-marks." Although some judicial opinions and some recent statutes speak of "property" in trade-marks, or call the right to their exclusive use a kind of property, yet in strictness the remedy does not depend upon any true *property* acquired in these symbols and names, but upon the broad principle that a court of equity will not permit fraud to be practiced upon the public nor upon private individuals.⁵ It is well settled by modern decis-

437; *Keene v. Wheatley*, 9 Am. Law Reg. 33; *Folsom v. Marsh*, 2 Story, 100; *Grigsby v. Breckenridge*, 3 Bush, 480; 92 Am. Dec. 509.

¹ *Keene v. Kimball*, 16 Gray, 545; 77 Am. Dec. 426; *Keene v. Clarke*, 5 Rob. (N. Y.) 38; *Palmer v. De Witt*, 47 N. Y. 532; 7 Am. Rep. 480; 2 Sweeny, 530; 5 Abb. Pr., N. S., 130; *Bonicault v. Fox*, 5 Blatchf. 87; *Keene v. Wheatley*, 9 Am. Law Reg. 33; *Crowe v. Aiken*, 4 Am. Law Rev. 450.

² *Abernethy v. Hutchinson*, 1 Hall & T. 28, 40; 3 L. J. Ch. 209; *Keene v. Kimball*, 16 Gray, 545; 77 Am. Dec. 426, per Hoar, J.; *Bartlett v. Crittenden*, 4 McLean, 300.

³ *Prince Albert v. Strange*, 1 Macn. & G. 25; 1 Hall & T. 1; 2 De Gex & S. 652; *Turner v. Robinson*, 10 Ir. Ch. 121, 510; [*Pollard v. Photographic Co.*, 40 Ch. Div. 345.]

⁴ The restraint may be at the suit of the writer against the person written to, or his assigns, or a stranger, or at the suit of the person written to, or his personal representatives against a stranger: *Pope v. Curl*, 2 Atk. 342; *Gee v. Pritchard*, 2 Swanst. 402; *Thompson v. Stanhope*, Amb. 737; *Lord Perceval v. Phipps*, 2 Ves. & B. 19, 24; *Earl of Granard v. Dunkin*, 1 Ball & B. 207; *Folsom v. Marsh*, 2 Story, 100, 113; *Hoyt v. Mackenzie*, 3 Barb. Ch. 320; *Wetmore v. Scovell*, 3 Edw. Ch. 515, 529; *Woolsey v. Judd*, 4 Duer, 379.

⁵ The ground of the remedy was stated in *Farina v. Silverlock*, 6 De Gex, M. & G. 214, 217: "This right cannot properly be described as a copyright; it is, in fact, a right which can be said to exist only, and can be tested only, by its violation; it is the

ions, that when a trade-mark has been duly acquired by a manufacturer or dealer, an injunction will be granted at his suit to restrain other persons from using it upon their goods, or from using such imitations of it as will tend to mislead and deceive the public.¹ For a discussion of the

right which any person designating his wares or commodities by a particular trade-mark, as it is called, has to prevent others from selling wares which are not his, marked with that trade-mark, in order to mislead the public, and so incidentally to injure the person who is owner of the trade-mark."

¹ *Burgess v. Burgess*, 3 De Gex, M. & G. 896; *Rogers v. Nowill*, 3 De Gex, M. & G. 614; *Farina v. Silverlock*, 6 De Gex, M. & G. 214; *Edelsten v. Edelsten*, 1 De Gex, J. & S. 185; *Leather Cloth Co. v. American Leather Cloth Co.*, 11 H. L. Cas. 523; 4 De Gex, J. & S. 137; *Flavel v. Harrison*, 10 Hare, 467; *Holloway v. Holloway*, 13 Beav. 209; *Cocks v. Chandler*, L. R. 11 Eq. 446; *Marshall v. Ross*, L. R. 8 Eq. 651; *Leather Cloth Co. v. Lorton*, L. R. 9 Eq. 345; *Radde v. Norman*, L. R. 14 Eq. 348; *Hirst v. Denham*, L. R. 14 Eq. 542; *Seixo v. Provezende*, L. R. 1 Ch. 192; *Lee v. Haley*, L. R. 5 Ch. 155; *Wotherspoon v. Currie*, L. R. 5 H. L. 508; *Perry v. Truefitt*, 6 Beav. 66; *Collins Co. v. Brown*, 3 Kay & J. 423; *Collins Co. v. Cowen*, 3 Kay & J. 428; *Singer Mfg. Co. v. Loog*, L. R. 18 Ch. Div. 395; *Hendriks v. Montagu*, L. R. 17 Ch. Div. 638 (using a name); *Orr Ewing v. Johnston*, L. R. 13 Ch. Div. 434; [7 App. Cas. (H. L.) 219;] *Civil Service etc. Ass'n v. Dean*, L. R. 13 Ch. Div. 512; *Boulnois v. Peake*, L. R. 13 Ch. Div. 513, note; *Day v. Brownrigg*, L. R. 10 Ch. Div. 294; *Merch. Bank Co. v. Merch. Bank*, L. R. 9 Ch. Div. 560 (using name); *Seigert v. Findlater*, L. R. 7 Ch. Div. 801; *Linoleum Mfg. Co. v. Nairn*, L. R. 7 Ch. Div. 834; *Braham v. Beachim*, L. R. 7 Ch. Div. 848; *Moet v. Pickering*, L. R. 6 Ch. Div. 779; *Cheavin v. Walker*, L. R. 5 Ch. Div. 850; *Hirsch v. Jonas*, L. R. 3 Ch. Div. 584; *Singer Mfg. Co. v. Wilson*, L. R. 2 Ch. Div. 434; *Estcourt v. Estcourt etc. Co.*, L. R. 10 Ch. 276; *Upmann v. Elkan*, L. R. 7 Ch. 130; 12 Eq. 140; *Ford v. Foster*, L. R. 7 Ch. 611; *Cope v. Evans*, L. R.

18 Eq. 138; *Raggett v. Findlater*, L. R. 17 Eq. 29; *James v. James*, L. R. 13 Eq. 421; *Hall v. Barrows*, 4 De Gex, J. & S. 150; *Coffeen v. Brunton*, 5 McLean, 256; *Canal Co. v. Clark*, 13 Wall. 311; *Ames v. King*, 2 Gray, 379; *Boardman v. Meriden Britannia Co.*, 35 Conn. 402; 95 Am. Dec. 270; *Bradley v. Norton*, 33 Conn. 157; 87 Am. Dec. 200; *Congress etc. Spring Co. v. High Rock etc. Co.*, 45 N. Y. 291; 6 Am. Rep. 82; *Smith v. Woodruff*, 48 Barb. 438; *Samuel v. Berger*, 24 Barb. 163; *Howard v. Henriques*, 3 Sand. 725; *Palmer v. Harris*, 60 Pa. St. 156; 100 Am. Dec. 557; *Rowley v. Houghton*, 2 Brewst. 303; *Dixon Crucible Co. v. Guggenheim*, 2 Brewst. 321; *McCartney v. Garnhart*, 45 Mo. 593; 100 Am. Dec. 397; *Filley v. Fassett*, 44 Mo. 168; 100 Am. Dec. 275; *Gillott v. Esterbrook*, 48 N. Y. 374; 8 Am. Rep. 553; 47 Barb. 455; *Godillot v. Harris*, 81 N. Y. 263; *Burnett v. Phalon*, 3 Keyes, 594; *Gillott v. Kettle*, 3 Duer, 624; *Amoskeag Mfg. Co. v. Spear*, 2 Sand. 599; *Lockwood v. Bostwick*, 2 Daly, 521; *Curtis v. Bryan*, 2 Daly, 312; *Fetridge v. Wells*, 4 Abb. Pr. 144; *Coats v. Holbrook*, 2 Sand. Ch. 586; *Taylor v. Carpenter*, 2 Sand. Ch. 603; 11 Paige, 292; 42 Am. Dec. 114; *Woodward v. Lazar*, 21 Cal. 448; 82 Am. Dec. 751; *Derringer v. Plate*, 29 Cal. 292; 87 Am. Dec. 170; *Falkenburg v. Lucy*, 35 Cal. 52; 95 Am. Dec. 76; *Choynski v. Cohen*, 39 Cal. 501; 2 Am. Rep. 476; *Burke v. Cassin*, 45 Cal. 467; 13 Am. Rep. 204; *Coffeen v. Brunton*, 4 McLean, 516; *Walton v. Crowley*, 3 Blatchf. 440; *Hostetter v. Vowinkle*, 1 Dill. 329; *Heath v. Wright*, 3 Wall. Jr. 141; *Taylor v. Carpenter*, 3 Story, 458; 2 Wood. & M. 1; *Moorman v. Hoge*, 2 Saw. 78; *Taylor v. Gillies*, 59 N. Y. 331; 17 Am. Rep. 333; *Gouraud v. Trust*, 6 Thomp. & C. 133; 3 Hun, 627; *Meneely v. Meneely*, 3 Thomp. & C. 540; 1 Hun, 367. [See also *Manuf. Co. v. Trainer*, 101 U. S. 55; *Goodyear Co. v. Goodyear Rubber Co.*, 128 U. S.

numerous questions concerning the nature and validity of trade-marks, who may acquire them, how they may be acquired, what imitations are wrongful, and the like, the reader must be referred to the special treatises upon the subject.

§ 1355. **Good-will.**—Another intangible kind of property which will be protected from invasion by injunction is “good-will.” The peculiar right, or rather expectancy, called “good-will,” assumes that a certain business has been established and carried on at some specific place. It consists in the probability, based upon the habits of men, that the persons who have been accustomed to deal with that business at that specific place, as well as others, will continue to come to such place and deal in the future. When such a business is transferred, the good-will may be assigned with it.¹ If a good-will is thus assigned with a business, interference with it by the assignor will generally be restrained by injunction.²

§ 1356. **Trespasses.**—At an early day the court of chancery refused to interfere and restrain any trespasses. Lord Thurlow broke through this rule, and began to use the preventive relief against such wrongs. He was followed by Lord Eldon;³ and the jurisdiction is now firmly

598; *Gail v. Wackerbarth*, 28 Fed. Rep. 286; *Enoch Morgan's Sons Co. v. Troxell*, 89 N. Y. 292; 42 Am. Rep. 294; *Selchow v. Baker*, 93 N. Y. 59; 45 Am. Rep. 169; *Caswell v. Hazard*, 121 N. Y. 492; 18 Am. St. Rep. 833; *Hoxie v. Chaney*, 143 Mass. 592; 58 Am. Rep. 149; *Russia Cement Co. v. Le Page*, 147 Mass. 206; 9 Am. St. Rep. 685; *Chadwick v. Covell*, 151 Mass. 190; 21 Am. St. Rep. 442; *Weener v. Brayton*, 152 Mass. 101; *American Solid Leather Button Co. v. Anthony*, 15 R. I. 338; 2 Am. St. Rep. 898; *Alexander Brothers v. Morse*, 14 R. I. 153; 51 Am. Rep. 369; *Williams v. Brooks*, 50 Conn. 278; 47 Am. Rep. 642; *Pratt's Appeal*, 117 Pa. St. 401; 2 Am. St. Rep. 676; *Metcalf v. Brand*, 86 Ky. 331; 9 Am. St. Rep. 282; *Grow v. Seligman*, 47 Mich. 607; 41 Am. Rep. 737; *Ball v. Siegel*, 116 Ill. 137; 56 Am. Rep. 766.]

¹ Independently of statute, a good-

will by itself, without the business on which it depends, cannot be assigned: See Cal. Civ. Code, secs. 992, 993.

² When a person who had carried on a business at a certain locality transfers the business with its good-will, if he should set up the same business again so near the locality as to draw off the customers from the old place, this would be an infringement of the good-will. The legal remedy would be inadequate, for it would always be very difficult, if not impossible, to estimate the pecuniary damages upon any certain basis. The gist of the injury is undoubtedly the breach of an implied contract arising from the transfer; and often there is an express stipulation: See *ante*, under § 1344, cases concerning contracts in restraint of trade. [Also §§ 1405, note, 934, note.]

³ See opinion of Lord Eldon in *Thomas v. Oakley*, 18 Ves. 184; *Hanson v. Gardiner*, 7 Ves. 305.

established in its principles, although there is no little disagreement among the courts—and especially the American courts—in applying these principles.

§ 1357. **General Doctrine—Cases in Which Trespass may be Enjoined.**—If a trespass to property is a single act, and is temporary in its nature and effects, so that the legal remedy of an action at law for damages is adequate, equity will not interfere. The *principle* determining the jurisdiction embraces two classes of cases, and may be correctly formulated as follows: 1. If the trespass, although a single act, is or would be destructive, if the injury is or would be irreparable,—that is, if the injury done or threatened is of such a nature that, when accomplished, the property cannot be restored to its original condition, or cannot be replaced, by means of compensation in money,—then the wrong will be prevented or stopped by injunction. 2. If the trespass is *continuous* in its nature, if repeated acts of wrong are done or threatened, although each of these acts, taken by itself, may not be destructive, and the legal remedy may therefore be adequate for each single act *if it stood alone*, then also the entire wrong will be prevented or stopped by injunction, on the ground of avoiding a repetition of similar actions. In both cases the ultimate criterion is the inadequacy of the legal remedy.¹ All the cases, English and American, have

¹ The legal remedy is not adequate simply because a recovery of pecuniary damages is possible. It is only adequate when the injured party can, *by one action at law*, recover damages which constitute a complete and certain relief for the whole wrong,—a relief virtually as efficient as that given by a court of equity. This conclusion is sustained by the consensus of modern decisions of the highest authority; although it cannot be claimed that the cases are unanimous in its acceptance. The principle, so far as it applies to the first class of trespasses—those *essentially destructive*—was stated by Chancellor Kent in two leading cases, which may be regarded as the counterparts of each other: *Livingston v. Liv-*

ingston, 6 Johns. Ch. 497, 499; 10 Am. Dec. 353; and *Jerome v. Ross*, 7 Johns. Ch. 315, 333; 11 Am. Dec. 484. In *Livingston v. Livingston*, he granted an injunction, citing and relying upon the following English cases, among others: *Mitchell v. Dors*, 6 Ves. 147; *Hamilton v. Worsefold*, cited 10 Ves. 290; *Crockford v. Alexander*, 15 Ves. 138; *Twort v. Twort*, 16 Ves. 128; *Kinder v. Jones*, 17 Ves. 110; *Earl Cowper v. Baker*, 17 Ves. 128; *Gray v. Duke of Northumberland*, 17 Ves. 281; and *Thomas v. Oakley*, 18 Ves. 184. In *Jerome v. Ross*, *supra*, he refused to enjoin canal commissioners, acting under color of a state statute, from quarrying a ledge of rocks on complainant's land, it not appearing that

professed to adopt the inadequacy of legal remedies as the test and limit of the injunctive jurisdiction; but in applying this criterion, the modern decisions, with some exceptions among the American authorities, have certainly held the injury to be irreparable and the legal remedy inadequate in many instances and under many circumstances where Chancellor Kent would probably have refused to interfere. It is certain that many trespasses are now enjoined which, if committed, would fall far short of *destroying* the property, or of rendering its restoration to its original condition impossible. The injunction is granted, not merely because the injury is *essentially* destructive, but because, being continuous or repeated, the full compensation for the entire wrong cannot be obtained in one action at law for damages.¹ While the

the stone had any market value, or that its removal would injure the freehold. He cited *Stevens v. Beekman*, 1 Johns. Ch. 318, and distinguished *Gardner v. Newburgh*, 2 Johns. Ch. 162, and *Belknap v. Belknap*, 2 Johns. Ch. 463. Whatever may be thought of the actual decision in *Jerome v. Ross*, it cannot be denied that the tendency of Chancellor Kent's opinion in narrowing the jurisdiction to the comparatively few trespasses of an extraordinary and specially aggravated nature is opposed to the modern decisions of the highest ability and authority.

¹ Illustrations: Injury to houses, fixtures, land, etc.: *De Veney v. Gallagher*, 20 N. J. Eq. 33; *Witmer's Appeal*, 45 Pa. St. 455; 84 Am. Dec. 505; *Frederick v. Groshon*, 30 Md. 436; 96 Am. Dec. 591; *Ryan v. Brown*, 18 Mich. 196; 100 Am. Dec. 154; *Echelkamp v. Schrader*, 45 Mo. 505. Injuring a party-wall: *Phillips v. Bordman*, 4 Allen, 147; [*Graves v. Smith*, 87 Ala. 450; 13 Am. St. Rep. 60; *Harber v. Evans*, 101 Mo. 661; 20 Am. St. Rep. 646; and see *Henry v. Koch*, 80 Ky. 391; 44 Am. Rep. 484.] Cutting off an aqueduct or water supply: *Wilcox v. Wheeler*, 47 N. H. 488; *Wright v. Moore*, 38 Ala. 593; 82 Am. Dec. 731; *Pettigrew v. Evansville*, 25 Wis. 223; 3 Am. Rep. 50; [*Salem etc. Mills Co.*

v. Stayton W. D. Co., 33 Fed. Rep. 146; *Clark v. Glidden*, 60 Vt. 702; *Walker v. Emerson*, 89 Cal. 456.] Obstructing a railroad, or access to it: *London etc. R'y v. Lancashire etc. R'y*, L. R. 4 Eq. 174; *Clark v. Jeffersonville etc. R. R.*, 44 Ind. 248; [*Chicago etc. R. R. Co. v. Porter*, 72 Iowa, 426 (trespass on right of way of railroad).] Destroying trees, ornamental or timber: *Sarles v. Sarles*, 3 Sand. Ch. 601; *Daubenspeck v. Grear*, 18 Cal. 443; [*Smith v. Rock*, 59 Vt. 232; *Powell v. Cheshire*, 70 Ga. 357; 48 Am. Rep. 572; *Sullivan v. Rabb*, 86 Ala. 433, 442; but see *Dunkart v. Rinehart*, 87 N. C. 224.] Excavating ore, coal, stones, etc.: *West Point Iron Co. v. Reymert*, 45 N. Y. 703; *Anderson v. Harvey's Heirs*, 10 Gratt. 386; *Merced etc. Co. v. Fremont*, 7 Cal. 317; 68 Am. Dec. 262; *Real Del Monte etc. Co. v. Pond etc. Co.*, 23 Cal. 82; *More v. Massini*, 32 Cal. 590; [*Chambers v. Ala. Iron Co.*, 67 Ala. 353; *Hammond v. Winchester*, 82 Ala. 470; *Richards v. Dower*, 64 Cal. 62; *Scully v. Rose*, 61 Md. 408.] Diverting a stream from a mill: *Corning v. Troy etc. Factory*, 40 N. Y. 191. [Destruction of fences, land-marks, etc.: *Sapp v. Roberts*, 18 Neb. 299; *Preston v. Preston*, 85 Ky. 16; *Bolton v. McShaue*, 67 Iowa, 207 (by municipal officers).] Continuous or repeated trespasses: *Martyr v. Lawrence*, 2 De Gex,

same formula is employed by the courts of equity in defining their jurisdiction, the jurisdiction itself has practically been enlarged; judges have been brought to see and to acknowledge—contrary to the opinion held by Chancellor Kent—that the common-law theory of not

J. & S. 261, 271; *Allen v. Martin*, L. R. 20 Eq. 462; *Carpenter v. Gwynn*, 35 Barb. 395; *Musselman v. Marquis*, 1 Bush, 463; 89 Am. Dec. 637; [*Wheelock v. Noonan*, 108 N. Y. 186; 2 Am. St. Rep. 405; *Wilson v. Hill*, 46 N. J. Eq. 369; *Mills v. N. O. Seed Co.*, 65 Miss. 391; 7 Am. St. Rep. 671; *Owens v. Crossett*, 105 Ill. 354; *Ellis v. Wren*, 84 Ky. 254; *United States v. Brighton Ranch Co.*, 26 Fed. Rep. 218 (to compel the removal of a fence unlawfully erected on land of plaintiff).]

Examples of cases where an injunction was *refused*: *Smith v. Pettigill*, 15 Vt. 82; 40 Am. Dec. 667; *Attaquin v. Fish*, 5 Met. 140, 147; *Blake v. Brooklyn*, 26 Barb. 301; *Hart v. Albany*, 9 Wend. 571; *Southard v. Morris Canal Co.*, 1 N. J. Eq. 519, 521; *Lutheran Church v. Maschop*, 10 N. J. Eq. 57; *Cross v. Morristown*, 18 N. J. Eq. 305; *Torrey v. Camden etc. R.*, 18 N. J. Eq. 293; *Colwell v. Mays Landing etc. Co.*, 19 N. J. Eq. 245; *Mulvany v. Kennedy*, 26 Pa. St. 44; *Georges Creek etc. Co. v. Detmold*, 1 Md. Ch. 371; *Duvall v. Waters*, 1 Bland, 569, 577; 18 Am. Dec. 350; *Davis v. Reed*, 14 Md. 152; *Cherry v. Stein*, 11 Md. 1; *Shipley v. Ritter*, 7 Md. 408; 61 Am. Dec. 371; *Gause v. Perkins*, 3 Jones Eq. 177; 69 Am. Dec. 728; *Scotfield v. Van Bokkelen*, 5 Jones Eq. 342; *Thomas v. James*, 32 Ala. 723; *Lyon v. Hunt*, 11 Ala. 295, 306; 46 Am. Dec. 216; *Indianapolis etc. Co. v. Indianapolis*, 29 Ind. 245; *Blanchard v. Doering*, 23 Wis. 200; *Weigel v. Walsh*, 45 Mo. 560; [*Roebeling v. First Nat. Bank*, 30 Fed. Rep. 744; *Mechanics' Foundry v. Ryall*, 75 Cal. 601; *Smith v. Gardner*, 12 Or. 221; 53 Am. Rep. 342; *Fort Clark etc. Co. v. Anderson*, 108 Ill. 64; 48 Am. Rep. 545; *Leininger's Appeal*, 106 Pa. St. 398 (on unimproved land).] See also the following cases, illustrating,—
1. Trespasses which, though single, wrought great injury to property; and
2. Trespasses which were continuous: *Powell v. Aiken*, 4 Kay & J. 343, 355; *Great North etc. R'y v. Clarence R'y*,

1 Coll. C. C. 507; *Phillips v. Truby*, 8 Jur., N. S., 999; *Manchester etc. R'y v. Worksope Board of Health*, 23 Beav. 198, 209; *Corning v. Troy Iron and Nail Factory*, 40 N. Y. 191, 205, 206; 39 Barb. 311, 319, 325–328; 34 Barb. 485, 491, 492; 6 How. Pr. 89; *Davis v. Lambertson*, 56 Barb. 480, 485; *Niagara Falls etc. Co. v. Great W. R'y*, 39 Barb. 212, 224; [*North v. Peters*, 138 U. S. 271 (to restrain the levy of attachment on goods belonging to plaintiff as the property of another); *Payne v. Kansas & A. V. R. Co.*, 46 Fed. Rep. 546; *Everett v. Marquette*, 53 Mich. 450 (destruction of a building); *Erwin v. Fulk*, 94 Ind. 235.] Further illustrations: *Stannard v. Vestry of St. Giles*, L. R. 20 Ch. Div. 190, 196; *Strelley v. Pearson*, L. R. 15 Ch. Div. 113, 116; *Hall v. Byron*, L. R. 4 Ch. Div. 667; *Stanford v. Hurlstone*, L. R. 9 Ch. 116; *Hext v. Gill*, L. R. 7 Ch. 699; *Lord Auckland v. Westminster Board*, L. R. 7 Ch. 597; *London etc. R'y v. Lancashire etc. R'y*, L. R. 4 Eq. 174; *Bowser v. Maclean*, 2 De Gex, F. & J. 415; *Lloyd v. London etc. R'y*, 2 De Gex, J. & S. 568, 578; *Watson v. Sutherland*, 5 Wall. 74; *Chapman v. Toy Long*, 4 Saw. 28; *Patton v. Moore*, 16 W. Va. 428; 37 Am. Rep. 789; *Pierpont v. Harrisville*, 9 W. Va. 215; *West v. Smith*, 52 Cal. 322; *Gilman v. Sheboygan etc. R. R.*, 40 Wis. 653; *Carpenter v. Grisham*, 59 Mo. 247; *Clark v. Jeffersonville etc. R. R.*, 44 Ind. 248; *Folley v. Passaic*, 26 N. J. Eq. 216; *Southmayd v. McLaughlin*, 24 N. J. Eq. 181; *Johnston v. Hyde*, 25 N. J. Eq. 454; 33 N. J. Eq. 632; *Echekamp v. Schrader*, 45 Mo. 505; *Hacker v. Barton*, 84 Ill. 313; *Bohlman v. Green Bay etc. R'y*, 40 Wis. 157, 169; *Wilson v. Mineral Point*, 39 Wis. 169; *Avery v. Empire Woolen Co.*, 82 N. Y. 582; *Henderson v. N. Y. Cent. R. R.*, 78 N. Y. 423; *Prot. Ref. Dutch Church v. Bogardus*, 5 Hun. 304; *Morgan v. Palmer*, 48 N. H. 336; *Creely v. Bay State B. Co.*, 103 Mass. 514; and see the California cases cited *ante*, under Private Nuisance.

interfering with persons until they shall have actually committed a wrong is fundamentally erroneous, and that a remedy which *prevents* a threatened wrong is in its essential nature better than a remedy which permits the wrong to be done, and then attempts to pay for it by the pecuniary damages which a jury may assess. The ideal remedy in any perfect system of administering justice would be that which absolutely precludes the commission of a wrong, not that which awards punishment or satisfaction for a wrong after it is committed. I have placed in the foot-note some illustrations of numerous particular cases in which the injunction has been granted, all depending upon their own circumstances, but all resting upon the same general principle, that the legal remedy of damages is not adequate, and the ends of justice require the relief of prevention in place of mere compensation.

§ 1358. **Slander of Title — Libels — Wrongful Use of Name.** — Partly by analogy with the restraint of trespasses, and partly by analogy with the restraint of that fraud upon the public and upon the proprietor which is involved in the use of counterfeited trade-marks, the English courts have, by recent decisions, exercised the injunctive jurisdiction to restrain injurious publications concerning property which operate as a slander of the owner's title, and libelous publications which are injurious to the plaintiff's business, trade, or profession, and the wrongful use of a name by which the public would be misled, and the plaintiff injured in his business.¹

¹ Such publications may be restrained by preliminary as well as by final injunction. The jurisdiction is exercised with great caution, and only where the facts are clearly established, and the untruth of the publication is satisfactorily shown. The following are the most important cases: Quartz Hill etc. Co. v. Beall, L. R. 20 Ch. Div. 501, 507 (libel on a corporation); Halsey v. Brotherhood, L. R. 19 Ch. Div. 386; 15 Ch. Div.

514 (slander of title to a patent right); Dicks v. Brooks, L. R. 15 Ch. Div. 22 (same); Thomas v. Williams, L. R. 14 Ch. Div. 864, 871, 872 (libel injurious to a trade); Thorley's Cattle Food Co. v. Massam, L. R. 14 Ch. Div. 763, reversing L. R. 6 Ch. Div. 582 (same; a leading case); [Hill v. Davies, 21 Ch. Div. 798; Hermann Loog v. Bean, 26 Ch. Div. 306; Hayward v. Hayward, 34 Ch. Div. 198; Liverpool etc. Ass'n v. Smith, 37 Ch. Div. 170.] In Pru-

This extension of the jurisdiction is not based, as it seems, upon any statutory enlargement of the inherent powers of equity; but is the result of the new system by which the one court is empowered to administer both legal and equitable remedies in any and all actions. The American courts seem, thus far, unwilling to follow the example of the recent English decisions, and they decline to extend the jurisdiction so as to restrain such torts as libels on business, slanders of title, and the like.¹

dential Ass. Co. v. Knott, L. R. 10 Ch. 142, Fisher v. Appollinaris Co., L. R. 10 Ch. 297, Clover v. Royden, L. R. 17 Eq. 190, and Mulkern v. Ward, L. R. 13 Eq. 619, the jurisdiction to enjoin such libelous publications was denied; while in Dixon v. Holden, L. R. 7 Eq. 488, and Springhead etc. Co. v. Riley, L. R. 6 Eq. 551, it had been exercised. See also Shaw v. Earl of Jersey, L. R. 4 C. P. D. 120, 359; Saxby v. Easterbrook, L. R. 3 C. P. D. 339. As to restraining the use of plaintiff's name by defendant in his own business, see Fullwood v. Fullwood, L. R. 9 Ch. Div. 176; James v. James, L. R. 13 Eq. 421; Massam v. Thorley's etc. Co., L. R. 6 Ch. Div. 574; Day v. Brownrigg, L. R. 10 Ch. Div. 294. [See also Thynne v. Shove, 45 Ch. Div. 577; Lane v. Smythe, 46 N. J. Eq. 447; Celluloid Mfg. Co. v. Cellonite Mfg. Co., 32 Fed. Rep. 94 (injunction granted to restrain the fraudulent use of an imitation of the corporate name); Meyers v. Kalamazoo Buggy Co., 54 Mich. 215; 52 Am. Rep. 811.] In Emperor of Austria v. Day, 3 De Gex, F. & J. 217, it was held that an injunction would be granted at the suit of a foreign sovereign to restrain the manufacture and issue, within English territory, of spurious notes and securities of the foreign government.

¹ In Massachusetts these decisions are expressly repudiated: Boston Diatite Co. v. Florence Mfg. Co., 114

Mass. 69; 19 Am. Rep. 310; Whitehead v. Kitson, 119 Mass. 484; [Raymond v. Russell, 143 Mass. 295; 58 Am. Rep. 137; vol. 1, § 320, note.] Injunctions to restrain libelous publications concerning the plaintiff's business were also refused in Life Ass'n v. Boogher, 3 Mo. App. 173; Mauger v. Dick, 55 How. Pr. 132; and Singer Mfg. Co. v. Domestic etc. Co., 49 Ga. 70; 15 Am. Rep. 674. [See also Kidd v. Horry, 28 Fed. Rep. 773, per Bradley, J.; Baltimore Car Wheel Co. v. Bemis, 29 Fed. Rep. 95; Kelley v. Ypsilanti etc. Co., 44 Fed. Rep. 19. In Bell v. Singer Mfg. Co., 65 Ga. 452, the jurisdiction was recognized, but relief was refused.] In Celluloid Mfg. Co. v. Goodyear etc. Co., 13 Blatchf. 375, the jurisdiction is recognized to restrain such publications when they are not only false and injurious, but also malicious: [Emack v. Kane, 34 Fed. Rep. 49 (to restrain the issuance of intimidating circulars, maliciously designed to injure the plaintiff's business); Casey v. Cincinnati Typ. Union, 45 Fed. Rep. 135; Sherry v. Perkins, 147 Mass. 212; 9 Am. St. Rep. 689 (independently of the ground of libel, to restrain the displaying of banners calculated to injure the plaintiff's business and deter workmen from entering into or continuing in his employment); compare Mayer v. Journeymen Stonecutters' Ass'n, 47 N. J. Eq. 519.]

SECTION III.

MANDATORY INJUNCTIONS.

ANALYSIS.

§ 1359. Nature and object; when granted.

§ 1359. **Nature and Object — When Granted.** — This term, in strictness, is confined to interlocutory or preliminary injunctions. Where, on the final hearing in a case of nuisance, or interference with easements, or continued trespass analogous to nuisance, the relief is granted compelling the defendant to remove his obstructions or erections, and to restore the plaintiff to his original condition, and thereby to end the wrong, the remedy is in fact an ordinary decree for an abatement, and is in no proper sense an injunction of any kind. But in these and similar cases the *preliminary* injunction, while purporting simply to restrain the wrong, and while negative in its terms, may be so framed that it restrains the defendant from permitting his previous wrongful act to operate, and therefore virtually compels him to undo it by removing the obstructions or erections, and by restoring the plaintiff to his former condition. Such an injunction is termed mandatory, and resembles in its effect the restorative interdict of the Roman law. It is used where the injury is immediate, and pressing, and irreparable, and clearly established by the proofs, and not acquiesced in by the plaintiff, since an order directly compelling an abatement of the nuisance, or a removal of the obstructions, cannot be made upon interlocutory motion.¹ The

¹ Preliminary mandatory injunctions have undoubtedly been granted more freely by the English courts than by the American. Indeed, it has been said in some American decisions that a mandatory *interlocutory* injunction would never be granted. This doctrine is not only opposed to the overwhelming weight of authority,

but is contrary to the principle which regulates the administration of preventive relief, and is manifestly absurd.

In *Robinson v. Lord Byron*, 1 Brown Ch. 588, Lord Eldon granted a preliminary injunction restraining defendant "from using and maintaining certain dams, gates, etc., so as to pre-

rule is fully established, at least by the English decisions, and is not controverted by American authority, that in such cases, where the facts are clearly established and the injury is real, and the plaintiff acted promptly upon his acquiring knowledge of the defendant's proceeding, a preliminary mandatory injunction may be granted, although the act complained of was fully completed before the suit was commenced. It should be observed, however, that no other equitable remedy is more liable to be defeated by acquiescence, or by delay on the plaintiff's part from which acquiescence may be inferred. The cases require

vent water from flowing to plaintiff's mill as it had done." This was done for the express purpose of compelling defendant to remove the dams, gates, etc., which he had constructed. In *Lane v. Newdigate*, 10 Ves. 192, Lord Eldon granted a preliminary injunction restraining defendant "from impeding plaintiff from navigating [a certain canal] by continuing to keep the canal banks and works out of repair, by diverting the water, or by continuing the removal of the stop-gate." Lord Eldon said this would have the effect of causing defendant to restore the stop-gate and repair the banks; and he avowedly granted the injunction for that express object. These two cases are among the earliest, if not the very earliest, instances of preliminary injunctions intentionally and expressly mandatory in their operation. The following cases will furnish numerous illustrations, and will also show the limitations placed upon their use: *Rankin v. Huskisson*, 4 Sim. 13; *Hervey v. Smith*, 1 Kay & J. 389, 392; *Att'y-Gen. v. Metropolitan Board of Works*, 1 Hem. & M. 298, 312; *Hepburn v. Lordan*, 2 Hem. & M. 345, 352; *Earl of Mexborough v. Bower*, 7 Beav. 127, 133; *Greatrex v. Greatrex*, 1 De Gex & S. 692; *Green v. Green*, 5 Hare, 400, note; *Great North of England R'y v. Clarence R'y*, 1 Coll. C. C. 507, 517, 521, 526; *Blakemore v. Glamorganshire Canal Nav.*, 1 Mylne & K. 154, 183; *Spencer v. Birmingham R'y*, 8 Sim. 193, 198; *Att'y-Gen. v. Manchester R'y*, 8 Sim. 436; *Hooper v. Brodrick*, 11 Sim. 47; *Gaskin v. Balls*, L. R. 13 Ch. Div. 324; *Krehl v. Burrell*, L. R. 7 Ch. Div.

551; *Cooke v. Chilcott*, L. R. 3 Ch. Div. 694; *Lord Manners v. Johnson*, L. R. 1 Ch. Div. 673; *City of London etc. Co. v. Tennant*, L. R. 9 Ch. 212; *Holmes v. Upton*, L. R. 9 Ch. 214, note; *Goodson v. Richardson*, L. R. 9 Ch. 221; *Att'y-Gen. v. Mid-Kent R'y*, L. R. 3 Ch. 100; *Durell v. Pritchard*, L. R. 1 Ch. 244; *Smith v. Smith*, L. R. 20 Eq. 500; *Lady Stanley v. Earl of Shrewsbury*, L. R. 19 Eq. 616; *Bowes v. Law*, L. R. 9 Eq. 636; *Senior v. Pawson*, L. R. 3 Eq. 330; *Beadel v. Perry*, L. R. 3 Eq. 465; *Martin v. Headon*, L. R. 2 Eq. 425; *Spokes v. Banbury Board of Health*, L. R. 1 Eq. 42; *Curriers' Co. v. Corbett*, 4 De Gex, J. & S. 764; *Jacomb v. Knight*, 3 De Gex, J. & S. 533; *Low v. Innes*, 4 De Gex, J. & S. 286; *Isenberg v. East India House Co.*, 3 De Gex, J. & S. 263; *Kernot v. Potter*, 3 De Gex, F. & J. 447; *Black v. Good Intent etc. Co.*, 31 La. Ann. 497; *Longwood etc. R. v. Baker*, 27 N. J. Eq. 166; *Rogers Locomotive Works v. Erie R. R.*, 20 N. J. Eq. 379; *Cole etc. Min. Co. v. Virginia etc. Water Co.*, 1 Saw. 685; *Corning v. Troy Iron etc. Factory*, 40 N. Y. 191, 205; *Auburn etc. P. R. v. Douglass*, 12 Barb. 553; *Penniman v. N. Y. Balance etc. Co.*, 13 How. Pr. 40. [See also *Daniel v. Ferguson*, (1891), 2 Ch. 27; *Lord v. Carbon Iron Mfg. Co.*, 38 N. J. Eq. 452; *Herbert v. Penn. R. R. Co.*, 43 N. J. Eq. 23; *Delaware, L. & W. R. R. Co. v. Central etc. Co.*, 43 N. J. Eq. 605; *Bailey v. Schnitzius*, 45 N. J. Eq. 178; *Black Lick Mfg. Co. v. Saltsburg Gas Co.*, 139 Pa. St. 448; *Gardner v. Stroever*, 81 Cal. 148.]

of the plaintiff a promptness in objecting and in taking steps to enforce his objection, upon receiving notice of the defendant's structures or erections which are sought to be restrained, if the circumstances are such that the defendant would be unnecessarily prejudiced by the plaintiff's delay.¹

SECTION IV.

TO RESTRAIN ACTIONS OR JUDGMENTS AT LAW.

ANALYSIS.

- § 1360. Origin of the jurisdiction.
- § 1361. When the jurisdiction is not exercised: General doctrine.
- § 1362. When the jurisdiction may be exercised: First class; exclusive equitable interests or rights involved.
- § 1363. The same: Second class; legal remedies inadequate.
- § 1364. The same: Third class; fraud, mistake, or accident in the trial at law.
- § 1365. Jurisdiction to grant new trials at law in the United States.

§ 1360. **Origin of the Jurisdiction.**—The use of injunctions to stay actions at law was almost coeval with the establishment of the chancery jurisdiction. Without this means of interference to protect the rights of its suitors, the court of chancery could never have established, extended, and enforced its own jurisdiction.² It is no exaggeration to say that, during its formative periods, the equitable jurisdiction was built up through the instrumentality of the injunction restraining the prosecution of legal actions, where the defendants sought the aid of chancery, which alone could take cognizance of the equi-

¹ See *ante*, vol. 2, § 817. In some cases a delay by the plaintiff would clearly not be prejudicial to defendant. For example, in *Greatrex v. Greatrex*, 1 De Gex & S. 692, one partner had wrongfully removed the partnership books from the place of business, and a preliminary injunction was granted, restraining him "from keeping them or permitting them to be kept at any other place than the place of business," thus compelling him to restore the books. Here a de-

lay of weeks or even months could work the defendant no harm. Where the injunction is sought to compel the removal of structures, walls, buildings, and the like, if the plaintiff knowingly permit the defendant to go on and incur any considerable further expenditure of money before he makes objection, he will generally lose his right to the somewhat special remedy of a mandatory injunction.

² See 1 Spence's Eq. Jur. 674.

ties that would defeat a recovery at law against them. This was not accomplished, however, without a long and severe opposition from the common-law judges, which continued until the reign of James I.¹ The jurisdiction then firmly established by judicial authority has never since been questioned.² The reasons urged by the common-law judges were frivolous. The injunction is not addressed to, nor does it operate upon, the courts of law; instead of denying or interfering with, it virtually admits and assumes, their jurisdiction. It is addressed to the litigant parties, and prohibits them from resorting to the legal jurisdiction, because their controversies, depending upon equitable principles, or involving equitable features, can only be fully and finally determined by a tribunal having the equitable jurisdiction. Injunction is the remedy which, above all others, necessarily operates *in personam*.

§ 1361. **When the Jurisdiction is not Exercised — General Doctrine.** — Where a court of law can do as full justice to the parties and to the matter in dispute as can be done in equity, a court of equity will not stay proceedings at law.³ Equity will not restrain a legal action or judgment where the controversy would be decided by the court of equity upon a ground equally available at law, unless the party invoking the aid of equity can show some special *equitable* feature or ground of relief; and in the case assumed, this special feature or ground must necessarily be something connected with the mode of trying and deciding the legal action, and not with the cause of action or the defense themselves.⁴ It is not such a special equitable ground of interference that the party

¹ For a full account of this memorable contest, and its settlement under James I., see 1 Lord Campbell's Lives of the Chancellors, 235; 1 Spence's Eq. Jur. 675; 1 Hallam's Const. Hist. 472.

² *Ayliffe v. Duke*, 2 Freem. Ch. 152 (A. D. 1655); *Hawkshaw v. Parkins*, 2 Swanst. 539, 548; *Franklyn v. Thomas*, 3 Mer. 225, 234.

³ *Southampton Dock Co. v. Southampton etc. Board*, L. R. 11 Eq. 254.

⁴ Because it is assumed that the ground of decision is equally available at law and in equity, and therefore the special equitable feature must be something *dehors* the very issues and merits of the controversy: See *Harrison v. Nettleship*, 2 Mylne & K. 423.

has, by his own act or omission, failed to effectually avail himself of a valid defense at law, nor that the court of law has decided a question of law or of fact erroneously.¹ The principle is well established, and is universal in its application, that when a cause belongs to the jurisdiction

¹ [Mayor etc. of New York v. Brady, 115 N. Y. 615]; Simpson v. Lord Howden, 3 Mylne & C. 97, 108; Protheroe v. Forman, 2 Swanst. 227, 233; Ware v. Horwood, 14 Ves. 28, 31; Bateman v. Willoe, 1 Schoales & L. 201, 204, 206. In the last-named case Lord Redesdale stated this rule in language which has ever since been regarded as a correct exposition of the principle: "It is not sufficient to show that injustice has been done, but that it has been done under circumstances which authorize the court to interfere. Because if a matter has already been investigated in a court of justice, according to the common and ordinary rules of investigation, a court of equity cannot take on itself to enter into it again. Rules are established, some by the legislature, some by the courts themselves, for the purpose of putting an end to litigation, and it is more important that an end should be put to litigation than that justice should be done in every case. . . . The inattention of parties in a court of law can scarcely be made a subject for the interference of a court of equity. There may be cases cognizable at law and also in equity, and of which cognizance cannot be *effectually* taken at law; and therefore equity does sometimes interfere, as in cases of complicated accounts, where the party has not made a defense, because it was impossible for him to do it effectually at law. So where a verdict has been obtained by fraud, or where a party has possessed himself improperly of something, by means of which he has an unconscientious advantage at law, which equity will put out of the way or restrain him from using. But without circumstances of that kind, I do not know that equity ever does interfere to grant a trial of a matter which has already been discussed in a court of law,—a matter capable of being discussed there, and over which a court of law had full jurisdiction." It should be carefully

observed that the chancellor is not speaking of those cases which involve, in their very cause of action or defense, features or interests cognizable only by courts of equity; nor of the other class of cases which, in ordinary phraseology, belong to the concurrent jurisdiction both of law and equity; he refers to cases which in *themselves* present no equitable aspect, and properly come within the jurisdiction of the law, but which, for some reason or another, *have been wrongly tried and decided by the court of law*. There must have been some special *equitable* ground connected with this wrongful trial and decision, in order that equity may interfere and restrain the judgment. See also Holmes v. Stateler, 57 Ill. 209; McClure v. Miller, Bail. Eq. 107; 21 Am. Dec. 522; New Orleans v. Morris, 3 Woods, 103; Hungerford v. Sigerson, 20 How. 156; Tyler v. Hamersley, 44 Conn. 419; 26 Am. Rep. 479; Wallack v. Soc. Ref. Juv. Del., 67 N. Y. 23; Jackson v. Bell, 31 N. J. Eq. 554; 32 N. J. Eq. 411; Holmes v. Steele, 28 N. J. Eq. 173; Van Syckel v. Emery, 18 N. J. Eq. 387; Vanarsdalen v. Whitaker, 10 Phila. 153; Nelson v. Turner, 2 Md. Ch. 73; Chambers v. Penland, 78 N. C. 53; Att'y-Gen. v. Baker, 9 Rich. Eq. 521; Williams v. Stewart, 56 Ga. 663; Brown v. Wilson, 56 Ga. 534; Shaw v. Lindsey, 60 Ala. 344; Womack v. Powers, 50 Ala. 5; O'Connor v. Sheriff, 30 La. Ann., pt. 1, 441; Graham v. Roberts, 1 Head, 56, 59; Chadwell v. Jordan, 2 Tenn. Ch. 635; Hartman v. Heady, 57 Ind. 545; Comstock v. Henneberry, 66 Ill. 212; La Crosse etc. Co. v. Reynolds, 12 Minn. 213; Kemp v. Tucker, L. R. 8 Ch. 369; Baron de Womes v. Millier, L. R. 16 Eq. 554; [Waldo v. Preston, 135 Pa. St. 181; Smith v. Phinizy, 71 Ga. 641; Lewis v. Laylin, 46 Ohio St. 663; Center Township v. Board of Comm., 110 Ind. 580; Warren v. Cook, 116 Ill. 199; Bachelder v. Bean, 76 Me. 370; Phillips v. Pullen, 45 N. J. Eq. 5.]

of the law courts, equity will never interfere to restrain the prosecution of the action, nor to stay proceedings on the judgment or execution, *upon any mere legal grounds*, although it may be demonstrated that the complainant in equity (generally the defendant at law) had a valid legal defense, which was not made available either through the error of the court in determining the law or the facts, or the omissions of himself or his counsel in presenting it, or in obtaining the evidence by which it could have been supported.¹

¹ Hendrickson v. Hinckley, 17 How. 443, 445; Walker v. Robbins, 14 How. 584; Creath's Adm'r v. Sims, 5 How. 192; Marine Ins. Co. v. Hodgson, 7 Cranch, 332; Barker v. Elkins, 1 Johns. Ch. 465; Windwart v. Allen, 13 Md. 196; Katz v. Moore, 13 Md. 566; Lyday v. Douple, 17 Md. 188; Methodist Church v. Baltimore, 6 Gill, 391; 48 Am. Dec. 540; Brandon v. Green, 7 Humph. 130; Duckworth v. Duckworth's Adm'r, 35 Ala. 70; Holmes v. Stateler, 57 Ill. 209; Vennum v. Davis, 35 Ill. 568; Hinrichsen v. Van Winkle, 27 Ill. 334; Johnson v. Lyon, 14 Iowa, 431; [Evans v. Taylor, 28 W. Va. 184; Dubuque etc. R. R. Co. v. Cedar Falls etc. R. R. Co., 76 Iowa, 702.] In Hendrickson v. Hinckley, *supra*, Mr. Justice Curtis stated the principle in a very concise manner: "A court of equity does not interfere with judgments as law, unless the complainant has an equitable defense of which he could not avail himself at law because it did not amount to a legal defense, or had a good defense at law which he was prevented from availing himself of by fraud or accident unmixed with negligence of himself or his agents." [See also Embry v. Palmer, 107 U. S. 3, 10; Phillips v. Negley, 117 U. S. 665, 675; Knox Co. v. Harshman, 133 U. S. 152.]

It is immaterial whether the question or matter relied upon by the complainant in equity was considered by the law court or not. Omission to present or to make out a defense at law is not a ground for equitable relief: Marine Ins. Co. v. Hodgson, 7 Cranch, 332; Day v. Cummings, 19 Vt. 496; Peace v. Nailing, 1 Dev. Eq. 289; Champion v. Miller, 2 Jones Eq.

194; White v. Cahal's Adm'r, 2 Swan, 550; [Brenner v. Alexander, 16 Or. 349; 8 Am. St. Rep. 301.]

The error of the court of law in admitting or excluding evidence, or in instructing the jury, is no ground for the interposition of equity: Perrine v. Striker, 7 Paige, 598; Hartshorn v. Davenport, 2 Barb. Ch. 77; Vilas v. Jones, 1 N. Y. 274; Vaughn v. Johnson, 9 N. J. Eq. 173; Clapp v. Ely, 10 N. J. Eq. 178; Hood v. New York etc. R. R., 23 Conn. 609; Dilly v. Barnard, 8 Gill & J. 170; Prather v. Prather's Adm'r, 11 Gill & J. 170; Harnsbarger's Adm'r v. Kinney, 13 Gratt. 511; Powell v. Watson, 6 Ired. Eq. 94; Yarrowburgh v. Thompson, 3 Smedes & M. 291; 41 Am. Dec. 626; Paynter v. Evans, 7 B. Mon. 420; Shortridge v. Bartlett, 14 B. Mon. 200; Price v. Johnson Co., 15 Mo. 433; Danaher v. Prentiss, 22 Wis. 311.

That the legal defense was not successful, through the ignorance, negligence, or mistake of the party's own attorney or counsel, is no ground for interference: Warner v. Conant, 24 Vt. 351; 58 Am. Dec. 178; Burton v. Wiley, 26 Vt. 430; Emerson v. Udall, 13 Vt. 477; 37 Am. Dec. 604; Powell v. Stewart, 17 Ala. 719; Jamison v. May, 13 Ark. 600; Graham v. Roberts, 1 Head, 56; [Brownson v. Reynolds, 77 Tex. 254; Vaughan v. Hewitt, 17 S. C. 442.]

Ignorance of the facts constituting the defense does not excuse the omission of the party to make it, nor entitle him to the aid of equity, unless it can be shown that the party could not have acquired the information by the diligent and careful labor in preparing the cause for trial which he is

§ 1362. **When the Jurisdiction may be Exercised — First Class — Equitable Rights.** — I pass from this negative view to consider the doctrine on its affirmative side. The cases in which, according to its original jurisdiction unaffected by statute, equity may interfere by injunction, and restrain an action at law either before or after judgment, may be reduced to three general classes: 1. Where the controversy, in addition to its legal aspect, involves some equitable estate, right, or interest which is exclusively cognizable by a court of equity, so that a complete determination of the issues cannot be made by a court of law, it is well settled that equity not only may, but must, interfere at the suit of the party in whom the equitable estate or right is vested, and restrain the action at law, and decide the whole controversy. This is so when the defendant at law has a purely equitable defense which the court of law will not recognize or enforce, and especially when he is entitled to some affirmative equitable relief which will clothe him with a legal right or title, and thus defeat the legal action brought against him.

bound to use: *Ocean Ins. Co. v. Fields*, 2 Story, 59; *Truly v. Vanzer*, 5 How. 141; *Emerson v. Udall*, 13 Vt. 477; 37 Am. Dec. 604; *Slack v. Wood*, 9 Gratt. 40; *Allen v. Hamilton*, 9 Gratt. 255; *Miller v. Gaskins*, *Smedes & M. Ch.* 524; *Moran v. Woodyard*, 8 B. Mon. 537; *Smith v. Allen*, 63 Ill. 474; *Holmes v. Stateler*, 57 Ill. 209; *Hinrichsen v. Van Winkle*, 27 Ill. 334; [*Gorsuch v. Thomas*, 57 Md. 334.]

Criminal proceedings will never be enjoined: *Kerr v. Corporation of Preston*, L. R. 6 Ch. Div. 463; *Saull v. Browne*, L. R. 10 Ch. 64; *Portis v. Fall*, 34 Ark. 375; *Phillips v. Stone Mt.*, 61 Ga. 386; [*In re Sawyer*, 124 U. S. 200; *Hemsley v. Myers*, 45 Fed. Rep. 283; *Waters etc. Oil Co. v. Little Rock*, 39 Ark. 412; *New Home etc. Machine Co. v. Fletcher*, 44 Ark. 140. See, however, *City of Atlanta v. Gate City Gas Light Co.*, 71 Ga. 106 (criminal proceedings against the employees of a company, primarily designed to obstruct it in the enjoyment of its franchise, en-

joined); *Schandler Bottling Co. v. Welch*, 42 Fed. Rep. 561.]

An injunction will not ordinarily be granted to restrain an action in a foreign country or in another state, but may be, under special circumstances: *In re Boyse*, L. R. 15 Ch. Div. 591; *Moor v. Anglo-Italian Bank*, L. R. 10 Ch. Div. 681; *Hope v. Carnegie*, L. R. 1 Ch. 320; *In re Chapman*, L. R. 15 Eq. 75; *Ostell v. Le Page*, 2 De Gex, M. & G. 892; *Kittle v. Kittle*, 8 Daly, 72; *Cole v. Young*, 24 Kan. 435; [*Carson v. Dunham*, 149 Mass. 52; 14 Am. St. Rep. 397; and see § 1318, note.]

Proceedings in another equitable action may, in a proper case, be enjoined: *Prudential Assur. Co. v. Thomas*, L. R. 3 Ch. 74; *Mann v. Flower*, 26 Minn. 479; *Bond v. Greenwald*, 7 Baxt. 466; *Haescig v. Brown*, 34 Mich. 503. And see *Erie R'y v. Ramsey*, per Folger, J., quoted *post*, in note under § 1371; but see *Endter v. Lennon*, 46 Wis. 299. Restraining proceedings in probate courts for want of jurisdiction, see *Wright v. Fleming*, 76 N. Y. 517.

Cases of this kind belong to the first branch of the exclusive jurisdiction of equity as described in the first volume.¹ This rule assumes that the equitable questions contained in the defense extend to the entire cause, so that their decision determines the controversy. When the cause contains both legal and equitable questions which are distinct, the court of equity, while taking jurisdiction, may not restrain the proceedings at law prior to the obtaining of judgment.²

¹ See *ante*, § 219, and cases cited in note. The cases to which this doctrine is applicable are numberless, and in fact cover the entire domain of equitable estates, interests, and primary rights which constitute the first branch of the exclusive jurisdiction. The following cases give examples of equitable rights which have thus been protected: *Hibbard v. Eastman*, 47 N. H. 507; 93 Am. Dec. 467; *Ross v. Harper*, 99 Mass. 175; *Fanning v. Dunham*, 5 Johns. Ch. 122; 9 Am. Dec. 283; *Skinner v. White*, 17 Johns. 357; *Varick v. Edwards*, Hoff. Ch. 382; 11 Paige, 289; 5 Denio, 664, 679; *County of Armstrong v. Brinton*, 47 Pa. St. 367, 374; *Jones v. Slubey*, 5 Har. & J. 372; *White v. Crew*, 16 Ga. 416; *Pollock v. Gilbert*, 16 Ga. 398; 60 Am. Dec. 732; *Frith v. Roe*, 23 Ga. 139; *Greenlee v. Gaines*, 13 Ala. 198; 48 Am. Dec. 49; *Henwood v. Jarvis*, 27 N. J. Eq. 247; *Wyckoff v. Victor etc. Co.*, 43 Mich. 309; *Scrivin v. Hursh*, 39 Mich. 98; *Detroit etc. R. R. v. Brown*, 37 Mich. 533; *Haescig v. Brown*, 34 Mich. 503; *Pindell v. Quinn*, 7 Ill. App. 605; *Hager v. Buechler*, 6 Ill. App. 462; *Moses v. Sanford*, 2 Lea, 655; *Breeden v. Grigg*, 8 Baxt. 163; *Deaderick v. Mitchell*, 6 Baxt. 35; *Frank v. Morris*, 9 W. Va. 664; *Hill v. Billingsly*, 53 Miss. 111; *Texas Land Co. v. Turman*, 53 Tex. 619; *Earl of Aylesford v. Morris*, L. R. 8 Ch. 484; *Lord Tredegar v. Windus*, L. R. 19 Eq. 607; *Crofts v. Middleton*, 8 De Gex, M. & G. 192; *Evans v. Bremridge*, 8 De Gex, M. & G. 100; and see *ante*, vol. 2, cases in note under § 914.

Under the application of this doctrine, an action at law may be enjoined, in order to avoid a multiplicity of suits, or a circuity of action: See

ante, vol. 1, §§ 245 et seq.; *Oelrichs v. Spain*, 15 Wall. 211, 228; Penn. etc. Co. v. Delaware etc. Co., 31 N. Y. 91; *Eldridge v. Hill*, 2 Johns. Ch. 281; *Tice v. Annin*, 2 Johns. Ch. 125; *Trustees etc. v. Nicoll*, 3 Johns. 566; *West v. Mayor etc.*, 10 Paige, 539; *Jumel v. Jumel*, 7 Paige, 591; *Heyer v. Pruyn*, 7 Paige, 465; 34 Am. Dec. 355; *Marsh v. Pike*, 10 Paige, 595; *Woodruff v. Fisher*, 17 Barb. 224; *Third Ave. R. R. v. The Mayor etc.*, 54 N. Y. 159; *Paterson etc. R. R. v. Jersey City*, 9 N. J. Eq. 434; *Stevenson v. Black*, 1 N. J. Eq. 338; *Klapworth v. Dressler*, 13 N. J. Eq. 62; 78 Am. Dec. 69; *Woods v. Monroe*, 17 Mich. 238; *Scott v. Shreeve*, 12 Wheat. 605. And also in suits brought to obtain a discovery in aid of the defense at law: *Boughton v. Phillips*, 6 Paige, 433; *King v. Clark*, 3 Paige, 76; *Williams v. Harden*, 1 Barb. Ch. 298.

² See *Williams v. Earl of Jersey*, Craig & P. 91; *Gridley v. Garrison*, 4 Paige, 647; *Mitchell v. Oakley*, 7 Paige, 68; *Ragsdale v. Hagy*, 9 Gratt. 409; *Justice v. Scott*, 4 Ired. Eq. 108; *Hill v. Billingsly*, 53 Miss. 111.

In the cases referred to, it is supposed that there are both legal and equitable issues which may be tried and decided separately, and the decision of neither determines the whole controversy. Of course, if the equitable issues are really the very gist of the cause, and upon their decision the whole case really turns, and the ends of justice demand it, the court of equity may take control of the entire controversy by enjoining the further prosecution of the action at law. It is only where the decision of the equitable issues would necessarily defeat the whole right at law and destroy

§ 1363. **The Same. Second Class.**—2. The second general class includes those cases which belong to the second branch of the *exclusive* jurisdiction of equity as heretofore described;¹ or, in the ordinary nomenclature of the books, cases over the facts of which both courts of law and of equity have a concurrent jurisdiction to grant their respective and distinctive remedies; for example, cases involving actual fraud, such as suits upon instruments, where the defense is fraud in procuring their execution. Where the jurisdiction is thus said to be concurrent, or in other words, where the interests and primary rights of the parties are legal, and the only question between the two courts relates to the adequacy of their respective remedies, as a general rule the tribunal which first exercises jurisdiction is entitled, or at least permitted, to retain an exclusive control of the issues.² It is therefore a well-settled doctrine that in cases of this kind, where the primary rights of both parties are legal, and courts of law will grant their remedies, and courts of equity may also grant their peculiar remedies, equity will not interfere to restrain the action or judgment at law, *provided the legal remedy will be adequate*; that is, provided the judgment at law will do full justice between the parties, and will afford a complete relief; the adequacy or inadequacy of the legal remedy is the sole and universal test.³ On the other hand, in cases of this general class,

the entire legal cause of action, that the chancellor *must* take the entire controversy under his own control. It is then a matter of right, and not of discretion.

¹ See *ante*, §§ 220, 221, and cases cited in note 2, under § 221.

² See *ante*, § 179; *Mallett v. Dexter*, 1 Curt. 178; *Stearns v. Stearns*, 16 Mass. 167, 171; *Winn v. Albert*, 2 Md. Ch. 42; *Merrill v. Lake*, 16 Ohio, 373; 47 Am. Dec. 377; *Thompson v. Hill*, 3 Yerg. 167.

³ See *ante*, §§ 220, 221, and cases cited; *Insurance Co. v. Bailey*, 13 Wall. 616; *Grand Chute v. Winegar*, 15 Wall. 373; *Hipp v. Babin*, 19 How. 271; *Smith v. McIver*, 9 Wheat. 532;

Russell v. Clark's Ex'rs, 7 Cranch, 69; *Bank of Bellows Falls v. Rutland etc. R. R.*, 28 Vt. 470; *Hazard v. Irwin*, 18 Pick. 95; *Fleming v. Slocum*, 18 Johns. 403; 9 Am. Dec. 224; *Roberts v. Anderson*, 3 Johns. Ch. 371; 18 Johns. 515; *Crane v. Bunnell*, 10 Paige, 333; *Camden etc. R. R. v. Stewart*, 18 N. J. Eq. 489; *Gould v. Hayes*, 19 Ala. 438; *Bumpass v. Reams*, 1 Sneed, 595; *Mason v. Piggott*, 11 Ill. 85; *Ross v. Buchanan*, 13 Ill. 55; *Southerland v. Harper*, 83 N. C. 200; *Jackson v. Bell*, 31 N. J. Eq. 554; 32 N. J. Eq. 411; *Imperial Fire Ins. Co. v. Gunning*, 81 Ill. 236; *Hoare v. Bremridge*, L. R. 8 Ch. 22; 14 Eq. 522; *Ochsenbein v. Papelier*, L. R. 8 Ch. 695.

equity will enjoin the action at law, and will determine the whole cause, whenever the legal remedy is inadequate; and the legal remedy is deemed to be inadequate if the ends of justice would not be satisfied by a mere judgment for the defendant in the action at law, but would require that some distinctively equitable relief, such as a cancellation or a reformation of the instrument sued upon, be conferred upon him. If any affirmative equitable relief is necessary to a full settlement of the controversy, and to a complete protection of the defendant's rights, a court of equity will interfere, entertain a suit for such relief, and enjoin the action at law.¹ The scope of this particular doctrine is plainly identical with that which governs the second branch of the exclusive jurisdiction of equity as described in the first volume. Whenever a court of equity exercises its jurisdiction over a case involving only *legal* interests and primary rights, for the purpose of awarding its exclusively equitable remedies, because the legal remedies would be inadequate, it will always, if necessary, enjoin an action at law which interrupts the full exercise of its jurisdiction.

¹ *Glastenbury v. McDonald's Adm'r*, 44 Vt. 453; *Atlantic etc. Co. v. Tredick*, 5 R. I. 171; *Bissell v. Beckwith*, 33 Conn. 357; *Hamilton v. Cummings*, 1 Johns. Ch. 517; *Bushnell v. Harford*, 4 Johns. Ch. 301; *Dale v. Roosevelt*, 5 Johns. Ch. 174; *Metler v. Metler's Adm'r*, 19 N. J. Eq. 457; *Morris v. Barnwell*, 60 Ga. 147; *Mitchell v. Word*, 60 Ga. 525; *Radcliffe v. Varner*, 56 Ga. 222; *Scott v. Scott*, 33 Ga. 102; *Coville v. Gilman*, 13 W. Va. 314; *Henwood v. Jarvis*, 27 N. J. Eq. 247; *Boyce's Ex'rs v. Grundy*, 3 Pet. 210, 215; *London etc. Ins. Co. v. Seymour*, L. R. 17 Eq. 85; *Traill v. Baring*, 4 De Gex, J. & S. 318; *Athenæum L. Ass. Soc. v. Pooley*, 3 De Gex & J. 294; and cases cited *ante*, in note under § 914.

There is some disagreement among the decisions upon the question of equity taking jurisdiction to compel the cancellation of an instrument, when the contracting party who seeks this relief might set up the same defense in an action at law and defeat a recovery. Compare *Insurance Co. v.*

Bailey, 13 Wall. 616, and *Grand Chute v. Winegar*, 15 Wall. 373, with *Franklin v. Green*, 2 Allen, 519, 522, and *Commercial etc. Ins. Co. v. McLoon*, 14 Allen, 351.

Within the scope of this doctrine, a court of equity will restrain the transfer of negotiable paper, or things in action, or chattels, or sometimes land, by one who has obtained their title fraudulently, to persons who would take them as *bona fide* purchasers for value, and thus hold them freed from existing equities: See *ante*, § 1340; *Poor v. Carleton*, 3 Sum. 70; *Glastenbury v. McDonald's Adm'r*, 44 Vt. 453; *Bank of Bellows Falls v. Rutland etc. R. R.*, 28 Vt. 470; *Franklin v. Green*, 2 Allen, 519; *Sherman v. Fitch*, 98 Mass. 59; *Ferguson v. Fisk*, 28 Conn. 501; *Hamilton v. Cummings*, 1 Johns. Ch. 517; *Delafield v. Illinois*, 26 Wend. 192; *Van Doren v. The Mayor etc.*, 9 Paige, 388; *Cox v. Clift*, 2 N. Y. 118; *Metler's Adm'r v. Metler*, 18 N. J. Eq. 270; 19 N. J. Eq. 457; *Bell v. Gamble*, 9 Humph. 117.

§ 1364. **The Same. Third Class.** — 3. In the two preceding classes of cases the ground for interference was some equitable element or feature involved in the very subject-matter of the controversy, or in the remedies appropriate thereto, which constituted an equitable defense in full or in part to the legal action, and over which the court of equity had either a concurrent or an exclusive jurisdiction. In the present class there is no such equitable element or feature of the controversy; there is no equitable defense embraced in any possible issues, no equitable right or interest of the defendant which defeats or modifies the legal cause of action; all the issues are wholly legal. The ground for the equitable jurisdiction to interfere is, therefore, something *dehors* the issues, something arising out of or connected with the *trial* itself of the legal action in the court of law. It was a settled doctrine of the equitable jurisdiction — and is still the subsisting doctrine except where it has been modified or abrogated by statute, or has become obsolete through the enlarged powers of the law courts to grant new trials — that where the legal judgment was obtained or entered through fraud, mistake, or accident, or where the defendant in the action, having a valid legal defense on the merits, was prevented in any manner from maintaining it by fraud, mistake, or accident, and there had been no negligence, laches, or other fault on his part, or on the part of his agents, then a court of equity will interfere at his suit, and restrain proceedings on the judgment which cannot be conscientiously enforced. From the very nature of the case, this interference takes place after the judgment, and not while the action at law is pending.¹

¹ Truly v. Wanzer, 5 How. 141; David v. Tileston, 6 How. 114; Hendrickson v. Hinckley, 17 How. 443; 5 McLean, 211; Marine Ins. Co. v. Hodgson, 7 Cranch, 332; Ocean Ins. Co. v. Fields, 2 Story, 59; Robinson v. Wheeler, 51 N. H. 384; Wingate v. Haywood, 40 N. H. 437, 441; Emerson v. Udall, 13 Vt. 477; 37 Am. Dec. 604;

Gainty v. Russi, 40 Conn. 450; Dobson v. Pearce, 12 N. Y. 156; 62 Am. Dec. 152; Mann v. Worrall, 16 Barb. 221; Foster v. Wood, 6 Johns. Ch. 87; Tomkins v. Tomkins, 11 N. J. Eq. 512, 514; Gifford v. Thorn, 9 N. J. Eq. 703; Moore v. Gamble, 9 N. J. Eq. 246; Glover v. Hedges, 1 N. J. Eq. 113, 119; Boulton v. Scott's Adm'rs, 3.

§ 1365. Jurisdiction to Grant New Trials at Law in the United States. — How far does the doctrine of this third

N. J. Eq. 231, 236, 241; *Wistar v. McManes*, 54 Pa. St. 318; 93 Am. Dec. 700; *Webster v. Skipwith*, 26 Miss. 341; *Humphries v. Bartee*, 10 Smedes & M. 282, 295; *Pelham v. Moreland*, 11 Ark. 442; *Nelson v. Rockwell*, 14 Ill. 375; *How v. Mortell*, 28 Ill. 479; *New Orleans v. Morris*, 3 Woods, 103; *Smith v. McLain*, 11 W. Va. 654; *Shields v. McClung*, 6 W. Va. 79; *Crim v. Handley*, 94 U. S. 652; [*State v. Engelmann*, 86 Mo. 551; *Dunn v. Miller*, 96 Mo. 324; *State v. Matley*, 17 Neb. 564; *Shufeldt v. Gandy*, 25 Neb. 602; *Given's Appeal*, 121 Pa. St. 260; 6 Am. St. Rep. 795; *Mayor etc. of New York v. Brady*, 115 N. Y. 615; *Pacific R. R. of Mo. v. Mo. P. R'y*, 111 U. S. 520; *Johnson v. Waters*, 111 U. S. 640; *Tucker v. Whittlesey*, 74 Wis. 74; *Baker v. O'Riordan*, 65 Cal. 368.]

Among the examples of the fraud, etc., which are a ground for this equitable jurisdiction, are the following: Where the defendant is prevented from defending by false and fraudulent promises or representations that the proceeding will not be carried on against him, and, relying thereon, he does not contest the case, as he might have done, and a judgment is thus obtained against him: *Pearce v. Olney*, 20 Conn. 544; *Huggins v. King*, 3 Barb. 616; *Powers's Ex'rs v. Butler's Adm'r*, 4 N. J. Eq. 465; *Holland v. Trotter*, 22 Gratt. 136; *Booth v. Stamper*, 6 Ga. 172; *Brooks v. Whitson*, 7 Smedes & M. 513; *How v. Mortell*, 28 Ill. 479; *Perry v. Siter*, 37 Mo. 273; *Jarboe v. Kepler*, 4 Ind. 177; *McLeran v. McNamara*, 55 Cal. 508; *Miller v. Harrison*, 32 N. J. Eq. 76; *Cregar v. Cramer*, 31 N. J. Eq. 375; *Purviance v. Edwards*, 17 Fla. 140; *Hinckley v. Miles*, 15 Hun, 170; *Scriven v. Hursh*, 39 Mich. 98; *Harris v. Western etc. R. R.*, 59 Ga. 830; *Baker v. Redd*, 44 Iowa, 179; *Markham v. Angier*, 57 Ga. 43; *Ellis v. Kelly*, 8 Bush, 621, 631; [*Gates v. Steele*, 58 Conn. 316; 18 Am. St. Rep. 268; *Wagner v. Shank*, 59 Md. 313; *Moore v. Lipscombe*, 82 Va. 546; *Kelley v. Kriess*, 68 Cal. 211; *Murphy v. Smith*, 86 Mo. 333. But see *Norman v. Burns*, 67 Ala. 248.] The same would be true of

fraudulent practices by which the defendant's witnesses were tampered with or removed, or his evidence was destroyed, so that he was unable to substantiate his defenses.

Accident, if without any negligence on the part of the one who asks the relief, — as, for example, sickness preventing a defendant from making his legal defense: *Bell v. Cunningham*, 1 Sum. 89; *Devoll v. Scales*, 49 Me. 320; *Carrington v. Holabird*, 17 Conn. 530; 19 Conn. 87; *Forrester v. Wilson*, 1 Duer, 624; *Griffith v. Brown*, 3 Rob. (N. Y.) 627; *Aaron v. Baum*, 7 Rob. (N. Y.) 340; *Owen v. Ranstead*, 22 Ill. 161; *Rice v. R. R. Bank*, 7 Humph. 39. Also surprise, ignorance, etc.; *Roach v. Duckworth*, 61 How. Pr. 128; *Beveridge v. Hewitt*, 8 Ill. App. 467; *Miller v. Harrison*, 32 N. J. Eq. 76; *Stanton v. Embry*, 46 Conn. 65; *Markham v. Angier*, 57 Ga. 43; *Smith v. Pearce*, 6 Baxt. 72 (the judge incompetent to sit); [*Dey v. Martin*, 78 Va. 1; *Chicago & E. I. R. R. Co. v. Hay*, 119 Ill. 493.] Failure to summon, notify, or serve process on the defendant, so that he was ignorant of the proceedings against him: *Crafts v. Dexter*, 8 Ala. 767; 42 Am. Dec. 666; *Stubbs v. Leavitt*, 30 Ala. 352; *Bell v. Williams*, 1 Head, 229; *Ridge-way v. Bank of Tenn.*, 11 Humph. 523, 525; *Owens v. Ranstead*, 22 Ill. 161; *Harshey v. Blackmarr*, 20 Iowa, 161; 89 Am. Dec. 520; *Walker v. Gilbert*, *Freem. (Miss.)* 85; *McNeill v. Edie*, 24 Kan. 108; *Ryan v. Boyd*, 33 Ark. 778; *Blakeslee v. Murphy*, 44 Conn. 188; see *Graham v. Roberts*, 1 Head, 56, 59; [*Wagner v. Shank*, 59 Md. 313; *Rice v. Tobias*, 89 Ala. 214; *Duncan v. Gerdine*, 59 Miss. 550; *State Ins. Co. v. Waterhouse*, 78 Iowa, 674; *San Juan etc. Min. Co. v. Finch*, 6 Col. 214; and see *Dobbins v. McNamara*, 113 Ind. 54; 3 Am. St. Rep. 626; *Great West Min. Co. v. Woodmas etc. Min. Co.*, 12 Col. 46; 13 Am. St. Rep. 204; but see *Railway Co. v. Ryan*, 31 W. Va. 364; 13 Am. St. Rep. 865.] In general, the party seeking the aid of equity to enjoin a judgment at law against him must not only show some ground for interference, within the doctrine of the text, but must also show

general class of cases operate under the modern legislation, and the principles of equity jurisprudence as administered in the United States? The jurisdiction of the English chancery to enjoin judgments at law, not by reason of any equitable right involved in the controversy itself, but on account of wrongful acts or omissions accompanying the trial at law, originated at a time when the law courts had little or no power to grant new trials for such causes.

that he has a good and sufficient defense to the cause of action, so that on a re-examination and retrial the result would be different: *Bradley v. Richardson*, 23 Vt. 720; *Tomkins v. Tomkins*, 11 N. J. Eq. 512, 514; *Reeves v. Cooper*, 12 N. J. Eq. 223; *Dawson v. Merch. etc. Bank*, 30 Ga. 664; *Saunders v. Albritton*, 37 Ala. 716; *Way v. Lamb*, 15 Iowa, 79, 83; *Stokes v. Knarr*, 11 Wis. 389; *Payne v. Dudley*, 1 Wash. (Va.) 196; *Sauer v. Kansas*, 69 Mo. 46; *Lemon v. Sweeney*, 6 Ill. App. 507; [*White v. Crow*, 110 U. S. 183; *Bloss v. Hull*, 27 W. Va. 503; *Masterson v. Ashcom*, 54 Tex. 324; *Harnish v. Bramer*, 71 Cal. 155. This is held to be true even where there was failure to summon, notify, or serve process on the defendant: *Rice v. Tobias*, 83 Ala. 348; *State v. Hill*, 50 Ark. 458; *Rotan v. Springer*, 52 Ark. 80; 20 Am. St. Rep. 155; *Schleicher v. Markward*, 61 Tex. 99; *Colson v. Leitch*, 110 Ill. 504; *Hier v. Kaufman*, 134 Ill. 215; *Burch v. West*, 134 Ill. 258; *Hauswirth v. Sullivan*, 6 Mont. 203, 214; but *contra*, that in such case appropriate relief will be granted without inquiry as to the merits of the original claim, see *Dobbins v. McNamara*, 113 Ind. 54; 3 Am. St. Rep. 626; *Great West Min. Co. v. Woodmas etc. Min. Co.*, 12 Col. 46, 60; 13 Am. St. Rep. 204; and see *Wilson v. Hawthorne*, 14 Col. 530; 20 Am. St. Rep. 290.]

The party seeking the aid of equity must also show diligence. A judgment will not be enjoined for any defense or right which could be asserted in the court of law, unless such party can show,—1. That he was prevented by fraud, mistake, or accident from maintaining his legal rights; and 2. That the obstacle which prevented him could not have been overcome or avoided by any reasonable diligence

or care on his part. These requisites are absolutely indispensable; the rule is inflexible, and it is enforced with special strictness when the ground relied upon for relief is newly discovered evidence, which the party had failed to obtain, through ignorance amounting to accident or through fraud: [*Mayor etc. of New York v. Brady*, 115 N. Y. 616;] *Fletcher v. Warren*, 18 Vt. 45; *Emerson v. Udall*, 13 Vt. 477; 37 Am. Dec. 604; *Warner v. Conant*, 24 Vt. 351; 58 Am. Dec. 178; *Floyd v. Jayne*, 6 Johns. Ch. 479; *Foster v. Wood*, 6 Johns. Ch. 87; *Duncan v. Lyon*, 3 Johns. Ch. 351; 8 Am. Dec. 513; *Graham v. Stagg*, 2 Paige, 321; *Vilas v. Jones*, 1 N. Y. 274; *Vaughn v. Johnson*, 9 N. J. Eq. 173; *Bierne v. Mann*, 5 Leigh, 364; *Meem v. Rucker*, 10 Gratt. 506; *Belamy v. Woodson*, 4 Ga. 175; 48 Am. Dec. 221; *Robb v. Halsey*, 11 Smedes & M. 140; *Williams v. Jones*, 10 Smedes & M. 108; *Conway v. Ellison*, 14 Ark. 360; *Paynter v. Evans*, 7 B. Mon. 420; *Thompson v. Meek*, 3 Sneed, 271; *Smith v. Allen*, 63 Ill. 474; *Smith v. Powell*, 50 Ill. 21; *Ruppertsberger v. Clark*, 53 Md. 402; *Kirby v. Pascault*, 53 Md. 531; *Hays v. Urquhart*, 63 Ga. 323; *Carolus v. Koch*, 72 Mo. 645; *Devinney v. Mann*, 24 Kan. 682; *Noble v. Butler*, 25 Kan. 645; *Burke v. Wheat*, 22 Kan. 722; *Wilson v. Coolidge*, 42 Mich. 112; *Hannon v. Maxwell*, 31 N. J. Eq. 318; *Jackson v. Bell*, 31 N. J. Eq. 554; 32 N. J. Eq. 411; *Holmes v. Steele*, 28 N. J. Eq. 173; *Earl v. Matheney*, 60 Ind. 202; *Kern v. Strausberger*, 71 Ill. 413; *Higgins v. Bullock*, 73 Ill. 205; *Fuller v. Little*, 69 Ill. 229; *Newman v. Morris*, 52 Miss. 402; *New York etc. R. R. v. Haws*, 56 N. Y. 175; *Richmond Enquirer Co. v. Robinson*, 24 Gratt. 548; *Rogers v. Parker*, 1 Hughes, 148.

To prevent a failure of justice, a distinct head of equitable jurisdiction was admitted, that of virtually granting new trials — of entertaining suits for a new trial — when a judgment at law had been thus obtained by fraud, mistake, or accident; and the injunction against further proceedings on the judgment was a mere incident of the broader relief which set aside the judgment and granted a rehearing of the controversy in the court of chancery. The original occasion for this special jurisdiction has disappeared. In England, and in most if not all of the American states, either through statutes or through judicial action, the courts of law have acquired, and constantly exercise, full powers to grant new trials, whenever from the wrongful acts or omissions of the successful party, or from accident or the mistake of the other party, or from error or misconduct of the judge or the jury, there has been a failure of justice. In other words, the powers of the law courts to set aside verdicts or judgments are so ample as to meet all the requirements of equity and justice, and the special equitable jurisdiction with respect to this matter has become obsolete in the very large majority of the states, if not in all of them.¹ The result is, in my opinion, that practically the only jurisdiction now exercised by courts of equity to enjoin judgments at law, where no equitable right or interest is involved in the controversy, on account of wrongful acts or omissions connected with the trial, is a part of and incidental to the broad jurisdiction which equity possesses to set aside and cancel judgments, deeds, contracts, and the like which have been obtained through fraud, undue influence, or mistake. A court of equity, in general, no longer assumes control over a legal judgment for the purpose of a new trial or any similar relief; it will, in a

¹ As an illustration, the California Code of Civil Procedure, sec. 657, authorizes a new trial to be granted for the following causes: 1. Irregularity in the proceedings of the court, jury, or adverse party, or misconduct of the court; 2. Misconduct of the jury; 3. Accident or surprise; 4. Newly discovered evidence; 5. Excessive damages; 6. Insufficiency of the evidence; 7. Error of law. [See vol. 1, §§ 278, 280.]

proper case of fraud or mistake, set aside such judgment; and wherever it will grant this final remedy, it will, as a preliminary and incidental relief, restrain by injunction all proceedings upon the judgment.¹ How far the jurisdiction to enjoin actions and judgments at law in the two other general classes of cases above described has been affected by the reformed procedure, in the states where that procedure prevails, is discussed in the next following chapter.

¹ The modern cases, where such judgments at law have been enjoined, will be found, on examination, to have arisen under the more general power, which equity clearly possesses, of setting aside the most solemn proceedings when tainted by fraud. The equitable jurisdiction to entertain bills for a new trial, if it exist at all, must be confined to a very few states.

CHAPTER SECOND.

EQUITABLE DEFENSES INTERPOSED IN LEGAL ACTIONS AS A SUBSTITUTE FOR INJUNCTIONS.

ANALYSIS.

- § 1366. General object.
- § 1367. Equitable pleas under the common-law procedure.
- § 1368. Equitable defenses under the reformed procedure.
- § 1369. Meaning and nature of an equitable defense.
- § 1370. General effect: Injunction against actions at law unnecessary.
- § 1371. Cases in which an injunction may still be necessary: First class; to avoid multiplicity of suits.
- § 1372. The same: Second class; new parties needed.
- § 1373. The same: Third class; no affirmative relief.
- § 1374. Some illustrations of equitable defenses.

§ 1366. **General Object.** — I shall not attempt in this chapter any general discussion of "equitable defenses" as provided for by the reformed procedure; such a discussion would be foreign to the purposes of this work.¹ My sole object is to consider, and if possible to answer, the more narrow questions: How far do equitable defenses interposed in legal actions, under the reformed procedure, interfere with, supersede, or abrogate the jurisdiction to enjoin actions and judgments at law in the first and second classes of cases mentioned in the last preceding section? and in what cases, if any, does that jurisdiction still remain operative, notwithstanding this peculiar feature of the reformed procedure? These inquiries are practically important only in the states and territories which have adopted the new procedure.

§ 1367. **Equitable Pleas under the Common-law Procedure.** — In some states where the two jurisdictions of law and equity are still kept distinct and separate, an

¹ The subject of "equitable defenses" includes that of equitable "counterclaims," and both are treated of at large in my work on Remedies by the Civil Action.

equitable defense may be allowed by statute to be pleaded in a legal action pending in a court of law. Would this legislation modify the first two general doctrines formulated in §§ 1362 and 1363 of the last section? A similar statute in England was held to produce no effect whatever upon the equitable jurisdiction; and the same interpretation must undoubtedly be given to any such enactment in the United States.¹

§ 1368. **Equitable Defenses under the Reformed Procedure — Legislation.** — The provisions of the reformed procedure are much broader, and must *practically* modify to a great extent the original jurisdiction of equity over actions at law. In the single "civil action" which it establishes, legal and equitable causes of action may be united and remedies obtained; legal and equitable defenses may be combined; equitable defenses may be set up to defeat a strictly legal cause of action, in actions which are otherwise wholly legal; and finally, either under the name of "equitable defense" or of "counterclaim," the defendant, as against a legal cause of action and in an action otherwise legal, may obtain the affirmative equitable relief, connected with the subject-matter, which under the former system he could only obtain by a separate suit brought in a court of equity.²

§ 1369. **Meaning and Nature of an Equitable Defense.** — It is important to determine, in the first place, the

¹ The common-law procedure act of 1854 (17 & 18 Vict., c. 125, sec. 83) authorized pleas upon equitable grounds. In *Jeffs v. Day*, L. R. 1 Q. B. 372, the court held that such equitable defenses only were admissible which would be a simple bar to the action, and would entitle defendant to the common-law judgment "that the plaintiff take nothing by his writ." That the equitable jurisdiction was unaffected, see *Gompertz v. Pooley*, 4 Drew. 448, 453; *Kingsford v. Swinford*, 28 L. J. Ch. 413; *Waterlow v. Bacon*, L. R. 2 Eq. 514; *Terrell v. Riggs*, 1 De Gex & J. 388; *Evans v. Bremridge*, 8 De Gex, M. & G. 100. [See also *Bias v. Vickers*, 27 W. Va.

456, which holds that such a defense is no ground of equitable jurisdiction if, in pursuance of the statute, it has previously been set up, without avail, in the action at law.]

² Legal and equitable defenses may also be united in the same answer: See New York, Code Proc., sec. 150; Code Civ. Proc. (new code), secs. 501, 507; Wisconsin, c. 125, sec. 13; Ohio, sec. 93; Missouri, art. 5, secs. 13, 14 (secs. 3522, 3523); Minnesota, c. 66, sec. 98; Florida, sec. 101; Oregon, sec. 72; California, sec. 441; North Carolina, sec. 102; South Carolina, sec. 173; Dakota, sec. 119; Kansas, sec. 94 (3621); Indiana (1881), sec. 347; Iowa, sec. 2655.

nature and meaning of an "equitable defense." A defense is a right possessed by the defendant, arising from the facts alleged in his pleadings, which defeats the plaintiff's cause of action or claim for the remedy demanded by his action. An equitable defense is such a right, which exists solely by virtue of equitable doctrines, and which was originally recognized by courts of equity alone. The right constituting an equitable defense may be one which, when consummated and enforced, confers upon the defendant some affirmative equitable relief clothing him with a paramount *legal* title or estate, and thus defeating the plaintiff's claim; or it may be one which is purely defensive, which entitles the defendant to no affirmative relief, and which simply operates to bar the plaintiff's action. The general term "equitable defense" plainly includes both of these classes.¹ This conclusion has not, however, been uniformly accepted. The doctrine is supported by the decisions of able courts, and seems to be settled in some of the states, that a defendant cannot avail himself of a defense as equitable, unless the facts thereof entitle him to equitable relief against the plaintiff's legal cause of action, nor unless he demands and obtains that specific remedy which, when granted, destroys the cause of action. In other words, he cannot invoke the right as a mere defense, or as long as he treats it and relies upon it as a mere defense. If he simply avers

¹ Under the English statute of 1854 allowing equitable pleas in actions at law, the courts recognized the fact that some equitable defenses would only operate to bar the plaintiff's action, and would entitle the defendant to no affirmative specific relief, and held that such equitable defenses alone could be pleaded: See *ante*, § 1367. In *Dobson v. Pearce*, 12 N. Y. 156, 168, 62 Am. Dec. 152, Johnson, J., said: "An equitable defense to a civil action is now as available as a legal defense. The question now is, *Ought the plaintiff to recover?* and anything which shows that he ought not is available to the defendant, whether it was formerly of equitable or of legal cogni-

zance." See also *Chase v. Peck*, 21 N. Y. 581, 586; *Wisner v. Ocumpaugh*, 71 N. Y. 113, 117; *Webster v. Bond*, 9 Hun, 437; *Wa Ching v. Constantine*, 1 Idaho, 266; *Harrington v. Fortner*, 58 Mo. 468, 474; *Holland v. Johnson*, 51 Ind. 346; *Maxwell v. Campbell*, 45 Ind. 360, 363; *Hammond v. Perry*, 38 Iowa, 217; *Crary v. Goodman*, 12 N. Y. 266; 64 Am. Dec. 506; *Seeley v. Engell*, 13 N. Y. 542; *New York Cent. Ins. Co. v. Nat. Protec. Ins. Co.*, 14 N. Y. 85; *Despard v. Walbridge*, 15 N. Y. 374; *Carpenter v. Oakland*, 30 Cal. 439, 442; *Harris v. Vinyard*, 42 Mo. 568; *Kennedy v. Daniels*, 20 Mo. 104; *Carman v. Johnson*, 20 Mo. 108; 61 Am. Dec. 593.

facts as a negative defense, he will not be permitted to rely upon them and to defeat the plaintiff's recovery by that means.¹

§ 1370. **General Effect — Injunctions against Actions at Law Unnecessary.** — The provisions of the codes, mentioned in the last paragraph but one, render the equitable jurisdiction to restrain legal actions in the great majority of instances wholly useless; and as a matter of fact such jurisdiction, if not actually abrogated, has become practically obsolete, except when certain special circumstances may require its exercise. Whether the defendant's case involves equitable elements which belong to either branch of the exclusive jurisdiction of equity, or has features which bring it within the concurrent jurisdiction, the defendant may, as a general rule, set up his equitable estate, interest, right, or claim by way of defense, and procure the entire controversy to be decided, and the affirmative equitable relief awarded, in the one civil action. There is thus no need of a separate equitable suit and an injunction restraining the legal action; and any resort to the former jurisdiction of equity for such a purpose will be discountenanced and repressed by the courts, unless it should be necessary, from special circumstances, to prevent a failure of justice.²

¹ Among the decisions tending to support this view, see *Follett v. Heath*, 15 Wis. 601; *Lombard v. Cowham*, 34 Wis. 486, 492; *Du Pont v. Davis*, 35 Wis. 631, 639; *Hicks v. Sheppard*, 4 Lans. 335, 337; *Cramer v. Benton*, 60 Barb. 216; *Dewey v. Hoag*, 15 Barb. 365; *Conger v. Parker*, 29 Ind. 380; *Kenyon v. Quinn*, 41 Cal. 325; *Bruck v. Tucker*, 42 Cal. 346, 352; *Miller v. Fulton*, 47 Cal. 146; *McClane v. White*, 5 Minn. 178, 190. In Wisconsin the defendant is required by statute to demand affirmative relief in pleading an equitable defense: *Rev. Stats.*, c. 141, sec. 7. See also, on the general question, *Webster v. Bond*, 9 Hun, 437; *Quebec Bank v. Weyand*, 30 Ohio St. 126; *Hinkle v. Margerum*, 50 Ind. 240; *Winslow v. Winslow*, 52 Ind. 8; *Hampson v. Fall*, 64 Ind. 382;

Pennoyer v. Allen, 51 Wis. 360; 50 Wis. 308; *Lawe v. Hyde*, 39 Wis. 345; *Kentfield v. Hayes*, 57 Cal. 409; *Hatcher v. Briggs*, 6 Or. 31; *Ten Broeck v. Orchard*, 74 N. C. 409; *Pomerooy on Remedies*, sec. 91.

² Under the new procedure all the courts of general original jurisdiction possess full equity powers; and this fact somewhat enlarges the scope of the chancery rule, that one court of equity will not, in general, enjoin the proceedings in another tribunal having the same equitable powers. As illustrations of the text, see *Grant v. Quick*, 5 Sand. 612; *Carpenter v. Keating*, 10 Abb. Pr., N. S., 223, 228; *Minor v. Webb*, 10 Abb. Pr. 284; *Harman v. Remsen*, 23 How. Pr. 174; *Bowers v. Tallmadge*, 16 How. Pr. 325; *Arndt v. Williams*, 16 How. Pr. 244; *Ben-*

§ 1371. **Cases in Which an Injunction may Still be Necessary. First Class—Multiplicity of Suits.**—There are, however, special circumstances in which a resort to the injunctive jurisdiction may still be necessary, in order to prevent a failure of justice. These cases may, I think, be reduced to a few general classes: 1. Where it is essential to promote the ends of justice that an entire controversy should be determined in one proceeding, so that the rights and duties of all parties interested may be finally settled, it may be necessary to restrain other suits, so as to prevent the pendency of two or more actions involving the same subject-matter, or to prevent a partial litigation of the controversy, or to prevent a multiplicity of suits depending upon the same facts or principles. In short, the jurisdiction must sometimes be exercised to prevent a multiplicity of actions, or partial investigations which would work injustice.¹ It should be observed that

nett v. Le Roy, 14 How. Pr. 178; Hunt v. Farmers' L. & T. Co., 8 How. Pr. 416; Dederick v. Hoysratt, 4 How. Pr. 350; Platto v. Deuster, 22 Wis. 482; Anthony v. Dunlap, 8 Cal. 26; Revalk v. Kraemer, 8 Cal. 66; 68 Am. Dec. 304; Gorham v. Toomey, 9 Cal. 77; Uhlfelder v. Levy, 9 Cal. 607; Wood v. Swift, 81 N. Y. 31.

¹ Erie R'y v. Ramsey, 45 N. Y. 637; Uhlfelder v. Levy, 9 Cal. 607, 615; Engels v. Lubeck, 4 Cal. 31. In the first of these cases the whole subject of the jurisdiction as modified by the new procedure was so fully and ably examined that I shall quote from the opinion of Folger, J., at some length. Ramsey had commenced an equitable suit against the Erie railroad before the supreme court in one district (the sixth). The company thereupon brought another equitable suit against Ramsey before the same court in a different district (the first), and obtained a preliminary injunction restraining Ramsey from the further prosecution of *his* action. Ramsey was adjudged by the court in the first district to have violated this injunction, and was fined for the contempt. He appealed to the court of appeals. It held that the supreme court in the

first district had jurisdiction to grant the injunction, so that it was not void. The opinion of Folger, J., discusses the doctrines which I have stated in the text: "In this state, since the adoption of the system of practice now existing, the equitable jurisdiction of a court to restrain proceedings at law in another court can be but seldom invoked. For there are but few courts, and they inferior, which have only a common-law jurisdiction. The courts of original jurisdiction are mostly possessed of both equitable and common-law powers, and they are, moreover, mostly of co-ordinate jurisdiction. So that it may have been well held that one court of equitable jurisdiction may not, as a usual procedure, restrain the proceedings in another court of equal powers. For one, as much as the other, has, in most cases, the means of doing exact justice to all the suitors before it, and may, as well as the other, afford to the suitor any remedy, equitable or legal, to which he is entitled, and in any proceeding consistent with its established rules and practice, though it would be too much to say that in no case can a court restrain the suitors in another court of co-ordinate powers. Thus the juris-

the proceeding enjoined under this doctrine may be equitable as well as legal.

diction of a court of equity to interfere to prevent a multiplicity of suits, or to draw to one action cognate questions and interests sought to be litigated in many actions, is well established. But is it to be held that the exercise of this jurisdiction is thwarted when the numerous suits are divided among several courts of co-ordinate law and equity powers? The suit to bring to one judgment all the actions must be in one of the courts, and to make that suit effectual to the end sought, the power must be in that court to enjoin the parties to the suits in the co-ordinate courts from proceeding therein. An instance of the exercise of one branch of this power sanctioned by this court is found in the case of *N. Y. & N. H. R. R. Co. v. Schuyler*, 17 N. Y. 592. Nor is it without other precedent that a court of equity, by action instituted before it, may question the proceedings in another court of equity. Thus one court of equity has overhauled the decree of another court of equity for fraud, contrivance, or covin in the obtaining of it: *Earl of Bandon v. Becher*, 3 Clark & F. 479; *Manaton v. Molesworth*, 1 Eden, 25. If it may entertain an action for that purpose, in which its decree, if favorable to the moving party, will have the effect to forever restrain the execution of the decree, the validity of which is brought into question, why may it not, pending the suit before it, restrain, by temporary injunction, the execution and enforcement of that decree? If it may thus restrain the proceedings in another court of equity to *enforce* the decree of that court, may it not restrain the proceedings in that court to obtain the decree? I remark that this consequence by no means necessarily follows. The reasons for attacking and setting aside a decree already obtained, on account of fraud, after the litigation is ended, do not necessarily apply to an interference with the litigation while pending in another court having full powers to deal with all questions which may arise. "We speak of it, not as a power usually to be exercised, but as one beyond the jurisdiction of the court. The affirm-

ative answer to this query is found in the fact that it has done so: *Jackson v. Leaf*, 1 Jacob & W. 229-232; *Clarke v. Earl of Ormonde*, Jacob, 546; *Earl of Newburg v. Wren*, 1 Vern. 220, and notes; *Vendall v. Harvey*, Nels. 19-21; *Booth v. Leycester*, 3 Mylne & C. 459; *Beckford v. Kemble*, 1 Sim. & St. 7; *Beauchamp v. Marquis of Huntley*, Jacob, 546; *Schuyler v. Pelissier*, 3 Edw. Ch. 191, 192. But this ground of equitable jurisdiction, viz., that to restrain proceedings in a court of law, is not removed when the same court is clothed with powers both at law and in equity. Granted that since the conjunction in this state of law and equity powers in nearly all courts of original jurisdiction, one court may not, as a usual thing, interfere with the proceedings in another court co-ordinate in power, yet the jurisdiction to restrain proceedings at law remains. A court, upon its equity side, may enjoin its own suitors proceeding upon its law side. The only question can be as to the method in which it shall be done. Is the method this alone: that in the action on the law side of the court, the facts be set up by answer, and affirmative equitable relief being prayed for upon them, the action be transformed into an equitable one, and thus there be, though not formally, yet practically, an injunction upon the party plaintiff from enforcing his strict legal right, until there shall be a determination of the claim of the party defendants for equitable relief? In a case in which all parties and all interests necessary to a full and complete determination of the controversy were or could be brought before the court in the original action in a proper attitude to each other, there could be such a determination: *Dobson v. Pearce*, 12 N. Y. 156; 62 Am. Dec. 152; *Despard v. Walbridge*, 15 N. Y. 374; *Chase v. Peck*, 21 N. Y. 581. But this is not always practicable." It should be remembered that several of the state codes provide for bringing in all necessary new parties in such cases. "If it be said, as is said, that a court cannot restrain itself, the answer is, that a court of equity never sought or

§ 1372. **The Same. Second Class — New Parties. — 2.**

A second possible case for injunction may arise under the codes in some of the states. It is suggested in the opinion of Mr. Justice Folger, quoted in the foot-note, that whenever the decision of all the matters embraced

claimed to restrain a court of law, but did enjoin the suitors in it. If it be said that the court can act upon its suitors by way of restraint in the very action which they are then prosecuting before it, one answer is, that all the persons to be restrained and affected by injunction, temporary and perpetual, may not be parties to that action, and so not in the power of the court. And another answer is, that a party defendant may sometimes, for immediate or full remedy, need relief against as well a co-defendant in the original action as the plaintiff therein, and that he cannot always have relief against this co-defendant, based upon the allegations of new matter in his own answer, inasmuch as the co-defendant may not in that action have opportunity of taking and contesting an issue upon those allegations, and the transaction out of which the equity arises may be of too complicated a nature to be investigated on a motion in the same court for summary relief: *Decker v. Judson*, 16 N. Y. 439-450, per Denio, C. J.; *Jones v. Grant*, 10 Paige, 348. So that it may well be that in an action pending in a court of both law and equity powers, the tribunal may not be able to mete out full justice to the parties litigant in the action pending before it, without entertaining a cross-action, in which other facts shall be presented and other persons made parties, and in which last action it may be needful that an injunction order issue restraining the prosecution of the first." The codes of several states provide that, in addition to an "equitable defense" and a "counterclaim," one or more defendants may file a cross-complaint against any or all of the plaintiffs, and any or all of the co-defendants, and against additional parties, for the purpose of obtaining equitable relief connected with the subject-matter of the action.

The same general doctrine, including the same single exception of restraining a multiplicity of actions, is

fully sustained by California decisions: *Uhlfelder v. Levy*, 9 Cal. 607, 614, 615; *Crowley v. Davis*, 37 Cal. 268, 269; *Hockstacker v. Levy*, 11 Cal. 76; *Gorham v. Toomey*, 9 Cal. 77; *Anthony v. Dunlap*, 8 Cal. 26; *Rickett v. Johnson*, 8 Cal. 34, 36; *Revalk v. Kraemer*, 8 Cal. 66, 71; 68 Am. Dec. 304; *Chipman v. Hibbard*, 8 Cal. 268, 270; *Flaherty v. Kelly*, 51 Cal. 145; *Agard v. Valencia*, 39 Cal. 292, 303; and see Cal. Civ. Code, sec. 3423, subd. 1.

The general doctrine of the text is also approved in Wisconsin: *Platto v. Denster*, 22 Wis. 482; *Farmers' etc. Bank v. Luther*, 14 Wis. 96; *State ex rel. Mills v. Kispert*, 21 Wis. 387; *Wilson v. Jarvis*, 19 Wis. 597; and in Indiana: *Ricker v. Pratt*, 48 Ind. 73; *Hardy v. Stone*, 23 Ind. 597.

While the strong current of the authorities is in this direction, the decisions are not wholly uniform. For example, in Kentucky, the case of *Dorsey v. Reese*, 14 B. Mon. 127, goes to the full length of the old chancery methods, and declares: "There is nothing, however, contained in the code which precludes him [the defendant], if he fails to avail himself of this privilege [i. e., the provision allowing equitable defenses and counterclaims], and permits a judgment to go against him, from bringing an equitable action to obtain relief against the judgment."

It should be added that the codes in some of the states expressly require every cross-right in the shape of a counterclaim to be interposed as such by a defendant, and if he fails to do so, he cannot enforce it by direct action. This provision, of course, includes all cases of equitable affirmative relief which might be set up as an equitable defense in a legal action, since such defenses are a species of counterclaims. For example, see Minn. Code 1858, sec. 72; *Lowry v. Hurd*, 7 Minn. 356, 363. In some other states a similar provision is made applicable only to one class of counterclaims.

within the equitable defense would require the presence of other parties besides those who are parties to the legal action, the defendant is not bound to set up the facts constituting his equitable claim for relief as a defense to the legal action, but may, and indeed must, institute a separate equitable suit, and enjoin, if necessary, the further prosecution of the legal action. The resort, under such circumstances, to a second equitable suit and an injunction against the prior action at law, may be proper in the states whose codes of procedure make no provision whatever for bringing in the new parties requisite for a full and final determination of the defendant's equitable claim; but the necessity of such a proceeding is certainly confined to those states. The rule as thus suggested is expressly repudiated by some of the decisions which hold that the necessity of bringing in other parties, in order to a complete determination of the entire controversy, makes no difference in the operation of the general doctrine resulting from the provisions of the new procedure.¹ In several of the states, the codes of procedure expressly provide for this contingency, by enacting that when the decision upon equitable defenses or counterclaims requires the presence of new parties, such parties may be brought in.² The cross-complaint or cross-petition as authorized by the codes in certain states seems also to preclude the necessity of a separate suit and injunction in most instances, even for the purpose of preventing a multiplicity of actions.³

§ 1373. **The Same. Third Class — No Affirmative Relief.**—3. There is another case which would seem to require a resort to an equitable suit and the injunction restraining a prior action at law in a portion of the states. Wherever the doctrine is settled that an

¹ See the California cases cited in the last note.

² See, among others, the codes of Ohio, sec. 96; Kansas, sec. 97; Nebraska, sec. 103; Indiana, sec. 63; Iowa, sec. 2662. This provision clearly ob-

viates the necessity of a resort to a separate suit, even if it does not prevent such resort under all circumstances.

³ For example, see Cal. Code Civ. Proc., sec. 442.

"equitable defense," within the meaning of the codes, must consist of facts entitling the defendant to some equitable affirmative specific relief, and must be pleaded with a demand for such relief, and must result in the granting thereof, it would seem that facts constituting a defense in equity, though not at law, but which operate solely by way of defense, *defeating the plaintiff's recovery*, and do not entitle the defendant to any affirmative relief, could only be taken advantage of by a separate equitable suit and an injunction perpetually restraining the action at law. Such facts do not, by its very definition, constitute a counterclaim, nor do they furnish an occasion for a "cross-complaint," which always involves affirmative relief. That there may be such defenses, constituting simply an *equitable* though not a legal *bar*, is undeniable; they were recognized by the former chancery jurisdiction; and their only mode of enforcement, prior to all legislation, was by suit in equity seeking as its only relief a perpetual injunction against the action at law.¹ It would seem to follow, as a necessary result, that if these defenses, operating only as an *equitable bar*, cannot be set up by answer as a defense under the codes, they must be enforced by a sepa-

¹ I have already shown that under the statute of 1854 the English law courts confined the "equitable pleas" allowed by the statute to this very species of equitable defense, which simply *barred* the action, and was equivalent, as the courts said, to the remedy of perpetual injunction: *Ante*, § 1367. One or two examples of such defenses will be sufficient to show their possible existence and to illustrate their nature. In an action at law for money had and received, the defendant might allege that he held and was entitled to the money by an equitable assignment; for example, that he held it under an order given by the person then entitled on the depositary of a future fund, non-existing at the time the order was given. These facts would show that the defendant was owner of the money in equity, though not at law; they would bar the plaintiff's right to recover; no affirmative relief would be necessary for the de-

fendant; in fact, no affirmative relief would be possible. Again, in an action of trover to recover damages for the alleged conversion of chattels, the defendant might state that he was entitled to the chattels by virtue of an equitable assignment from the original owner, such as an order on his depositary, or a sale or mortgage of the chattels which were to be acquired in the future. This would be a perfect equitable defense, but would require no affirmative relief. Under the former system these defenses could not be set up in the action at law; the defendant would be driven to a separate suit in equity, in which the only relief asked or obtained would be a perpetual injunction against the action at law or against the judgment. For an illustration of such suits, see *Burn v. Carvalho*, 7 Sim. 109; 4 Mylne & C 690; *Carvalho v. Burn*, 4 Barn. & Adol 332; 1 Ad. & E. 883.

rate equitable suit to perpetually enjoin the action at law. Such a result furnishes a cogent reason for holding that the term "equitable defense" as used in the codes of procedure embraces all possible defenses which are valid upon equitable doctrines, and is not confined to those which entitle the defendant to affirmative relief.

§ 1374. **Some Illustrations of Equitable Defenses.**—While it does not come within the purposes of this book to discuss the scope and effect of "equitable defenses," I have placed in the foot-note a number of well-considered and important cases which illustrate their operation.¹ They have been used most frequently in actions to recover possession of land, analogous to ejectment, and in actions by vendors in contracts for the sale of land, against their vendees. They have also been resorted to in actions upon mercantile contracts, in actions upon covenants, and in many other miscellaneous suits. These cases further show that the jurisdiction to restrain actions at law by injunction has become of very little importance, and almost obsolete, in the states where the reformed procedure prevails.

¹ In actions to recover possession of land: *Heermans v. Robertson*, 64 N. Y. 332; *Hoppough v. Struble*, 60 N. Y. 430; *Crary v. Goodman*, 12 N. Y. 266; 64 Am. Dec. 506; *Bartlett v. Judd*, 21 N. Y. 200; 78 Am. Dec. 131; *Chase v. Peck*, 21 N. Y. 581; *Harrington v. Fortner*, 58 Mo. 468; *Hubble v. Vaughan*, 42 Mo. 138; *Collins v. Rogers*, 63 Mo. 515; *Maxwell v. Campbell*, 45 Ind. 360; *McMannus v. Smith*, 53 Ind. 211; *Hampson v. Fall*, 64 Ind. 382; *Hammond v. Perry*, 38 Iowa, 217; *Richardson v. Bates*, 8 Ohio St. 257; *McClane v. White*, 5 Minn. 178; *Guedici v. Boots*, 42 Cal. 452; *Ten Broeck v. Orchard*, 74 N. C. 409. In actions by vendors against vendees: *Cavalli v. Allen*, 57 N. Y. 508; *Duffy v. O'Donovan*, 46 N. Y. 223, 227; *Leaird v. Smith*, 44 N. Y. 618; *Hubbell v. Von Schoening*, 49 N. Y. 326, 330; *Giles v. Austin*, 62 N. Y. 486; *Cythe v. La Fontain*, 51 Barb. 186; *Ingles v. Patterson*, 36 Wis. 373; *Onson v. Cown*, 22 Wis. 329; *Harris v. Vinyard*, 42 Mo. 568; *Petty v. Malier*, 15 B. Mon. 591, 604; *Creager v. Walk-*

er, 7 Bush, 1; *Talbert v. Singleton*, 42 Cal. 390; *Bruck v. Tucker*, 42 Cal. 346; *Hughes v. Davis*, 40 Cal. 117. In actions on mercantile contracts: *Seeley v. Engell*, 13 N. Y. 542; *New York Cent. Ins. Co. v. Nat. Protec. Ins. Co.*, 14 N. Y. 85; *Despard v. Walbridge*, 15 N. Y. 374; *Holland v. Johnson*, 51 Ind. 346; *Hinkle v. Margerum*, 50 Ind. 240; *Struman v. Robb*, 37 Iowa, 311; *Hablitzel v. Latham*, 35 Iowa, 550; *Becker v. Sandusky City Bank*, 1 Minn. 311. In miscellaneous actions for damages: *Haire v. Baker*, 5 N. Y. 357; *Pitcher v. Hennessey*, 48 N. Y. 415; *Dobson v. Pearce*, 12 N. Y. 156; 62 Am. Dec. 152; *Pennoyer v. Allen*, 51 Wis. 360; 50 Wis. 308. As to affirmative relief, see *Massie v. Stradford*, 17 Ohio St. 596; *Klonne v. Bradstreet*, 7 Ohio St. 322; *Quebec Bank v. Weyand*, 30 Ohio St. 126; *Reed v. Newton*, 22 Minn. 541; *Kellogg v. Aherin*, 48 Iowa, 299; *Hatcher v. Briggs*, 6 Or. 31; *Tucker v. McCoy*, 3 Col. 284; *Mills v. Buttrick*, 4 Col. 53, 123; *Douglas v. Haberstro*, 25 Hun, 262.

THIRD GROUP.

REMEDIES WHICH INDIRECTLY ESTABLISH OR PROTECT INTERESTS AND PRIMARY RIGHTS, EITHER LEGAL OR EQUITABLE.

CHAPTER FIRST.

REFORMATION AND CANCELLATION.

ANALYSIS.

- § 1375. General nature and object.
- § 1376. Reformation and re-execution of instruments.
- § 1377. Cancellation, surrender up, or discharge of instruments.

§ 1375. **General Nature and Object.**—The ultimate object of the remedies belonging to this group is the establishment or protection of interests, estates, and primary rights; but this object is accomplished *indirectly*. While these remedies are not so completely ancillary as interpleader and receivership, yet they are to a certain extent auxiliary. They do not, like a specific performance, or the execution of a trust, or an assignment of dower, or partition of land, operate directly and immediately to establish the plaintiff's title, and to confer upon him the complete dominion over his estate,—the ultimate relief which he seeks. Their effect in establishing his ultimate dominion is indirect. They are often used as the preparatory step which enables him to obtain, sometimes in the same action, and sometimes in a subsequent suit, the ultimate remedy which finally establishes his rights or obligations, or restores him to the full enjoyment of his

estate.¹ The reformation of a policy of insurance is not a final remedy; but it establishes the real contract, and thus enables the assured to recover the amount actually due according to the terms of that contract. The reformation of a deed does not directly restore the grantee to the dominion and possession of the land which had been omitted; but it places him in a position which enables him, if necessary, to assert his dominion and recover the possession. The cancellation of a deed does not of itself *directly* establish the plaintiff's title and put him in possession of the land, but it enables him, if necessary, to assert his title and obtain the possession. These remedies may be obtained on behalf of either a legal or an equitable interest, by either a legal or an equitable owner. The remedies constituting this group are the two following: reformation or re-execution of instruments, and rescission, cancellation, surrender up, or discharge of instruments.² Since they are chiefly occasioned by fraud or mistake, the general doctrines and rules determining the jurisdiction to grant them, and regulating their use, have already been fully examined in the preceding volume.³ In the present chapter I merely collect and arrange the classes of cases in which the jurisdiction will be or will not be exercised.

§ 1376. Reformation and Re-execution of Instruments.

— This subject has already been treated under the head of

¹ [Gardner v. Moore, 75 Ala. 394; 51 Am. Rep. 454; Connor v. Armstrong, 86 Ala. 262.]

² Reformation and re-execution are in fact one and the same remedy, depending upon the same rules; and the same is true of rescission, cancellation, surrender up, and discharge. The decree for cancellation generally includes a direction for a surrender up, and, if necessary, for a discharge of record.

³ See vol. 2, §§ 838-871 (on mistake); §§ 872-921 (on actual fraud); and §§ 922-974 (on constructive fraud). A large number of cases cited in these

chapters illustrate the remedies of "reformation" and "cancellation." In particular, see, as to jurisdiction to grant the relief of reformation or of cancellation on account of mistake, and the conditions of fact which must exist, §§ 870, 871, and cases in notes. As to cancellation on account of fraud, see §§ 910-921; English doctrine: § 912; the American doctrine: § 914. Incidents of the relief, what is required of the plaintiff as a condition to granting the relief: §§ 915-917. Persons against whom granted: § 918. Illustrations: §§ 919-921.

Mistake, and little more need here be said.¹ Equity has jurisdiction to reform written instruments in but two well-defined cases: 1. Where there is a mutual mistake,—that is, where there has been a meeting of minds,—an agreement actually entered into, but the contract, deed, settlement, or other instrument, in its written form, does not express what was really intended by the parties thereto; and 2. Where there has been a mistake of one party accompanied by fraud or other inequitable conduct of the remaining parties.² In such cases the instrument may be made to conform to the agreement or transaction entered into according to the intention of the parties. The conditions of fact giving rise to the exercise of the jurisdiction to grant reformation are numerous. Almost all written instruments may be reformed when a proper occasion is furnished. The following are among

¹ Vol. 2, §§ 838-871. The remedy of reformation virtually includes that of re-execution, since, in many cases, the latter follows as an incident to the former. In some instances the mistake occurs only in the execution: See *Miller v. Davis*, 10 Kan. 541; *Heaton v. Fryberger*, 38 Iowa, 185; *Parlin v. Stone*, 1 McCrary, 443. [Re-execution of conveyances defective for want of seal: *Lebanon Savings Bank v. Hollenbeck*, 29 Minn. 322; *Harding v. Jewell*, 73 Me. 426; 72 Me. 124; see also §§ 380, note, 383.] Equity has, however, a special jurisdiction to decree the re-execution of such instruments as deeds which have become accidentally lost or destroyed, on the ground that otherwise the plaintiff's title would be defective or embarrassed: *Bennett v. Ingoldsby*, Finch, 262; *Cummings v. Coe*, 10 Cal. 529; *Hoddy v. Hoard*, 2 Ind. 474; 54 Am. Dec. 456; and see *Clarke v. Featherston*, 32 Ind. 142; [*Griffin v. Fries*, 23 Fla. 173; 11 Am. St. Rep. 351. That where a deed, once duly delivered, is improperly withheld from registration, a court of equity will compel its production for that purpose, or, if destroyed, will have its place supplied by another, see *Brendle v. Herron*, 88 N. C. 383; *Edwards v. Dickinson*, 102 N. C. 519.]

² Vol. 2, §§ 845-850, 852-856, 870, and cases cited. See also the following additional cases: *Kilmer v. Smith*, 77 N. Y. 226; 33 Am. Rep. 613; *Albany Sav. Inst. v. Burdick*, 87 N. Y. 40; *Paine v. Upton*, 87 N. Y. 327; 41 Am. Rep. 371; *Arthur v. Homestead F. Ins. Co.*, 78 N. Y. 462; 34 Am. Rep. 550; *Ford v. Joyce*, 78 N. Y. 618; *Steinbach v. Relief F. Ins. Co.*, 77 N. Y. 498; 33 Am. Rep. 655; *Whittemore v. Farrington*, 76 N. Y. 452; *Moran v. McLarty*, 75 N. Y. 25; *Paine v. Jones*, 75 N. Y. 593; *Ramsey v. Smith*, 32 N. J. Eq. 28; *Real Estate Trust Co. v. Balch*, 13 Jones & S. 528; *Robertson v. Walker*, 51 Ala. 484; *Sutherland v. Sutherland*, 69 Ill. 481; *Evarts v. Steger*, 5 Or. 147; *Bradford v. Bradford*, 54 N. H. 463; *Botsford v. McLean*, 42 Barb. 445; 45 Barb. 478; *Snell v. Insurance Co.*, 98 U. S. 85. As to laches, carelessness, and the like, cutting off rights of remedy, see *Sable v. Maloney*, 48 Wis. 331; *McFadden v. Rogers*, 70 Mo. 421; *Snyder v. Ives*, 42 Iowa, 157; *Nicoll v. Mason*, 49 Ill. 358; *Hutson v. Fumas*, 31 Iowa, 154; *Stockbridge Iron Co. v. Hudson Iron Co.*, 107 Mass. 290; *McIntosh v. Saunders*, 68 Ill. 128; *Toops v. Snyder*, 70 Ind. 554; *Witthaus v. Schack*, 57 How. Pr. 310.

the most important: Deeds of conveyance,¹ mortgages,² leases,³ policies of insurance,⁴ bonds of various kinds,⁵

¹ The cases of reformation of deeds are many. As illustrations of the various questions which may arise, see *Harris v. Pepperell*, L. R. 5 Eq. 1; *Bloomer v. Spittle*, L. R. 13 Eq. 427; *White v. White*, L. R. 15 Eq. 247; *Gillespie v. Moon*, 2 Johns. Ch. 585; 7 Am. Dec. 559; *Clayton v. Freet*, 10 Ohio St. 544; *Deford v. Mercer*, 24 Iowa, 118; 92 Am. Dec. 460 (quitclaim); *Mattingly v. Speak*, 4 Bush, 316; *Lestrade v. Barth*, 19 Cal. 660; *Brown v. Balen*, 33 N. J. Eq. 469; *Weston v. Wilson*, 31 N. J. Eq. 51; *Day v. Day*, 84 N. C. 408; *Sawyer v. Hanson*, 48 Wis. 611; *Kilmer v. Smith*, 77 N. Y. 226; 33 Am. Rep. 613; *Jackson v. Andrews*, 59 N. Y. 244; *Bush v. Hicks*, 60 N. Y. 298; *Albany Sav. Inst. v. Burdick*, 87 N. Y. 40; *Crippen v. Baums*, 15 Hun, 136; *Johnson v. Johnson*, 8 Baxt. 261; *Blackburn v. Randolph*, 33 Ark. 119; *Michel v. Tinsley*, 69 Mo. 442; *Baker v. Massey*, 50 Iowa, 399; *Ballentine v. Clark*, 38 Mich. 395; *Pasman v. Montague*, 30 N. J. Eq. 385; *Fly v. Brooks*, 64 Ind. 50; *Nicholson v. Caress*, 59 Ind. 39; *Gerald v. Elley*, 45 Iowa, 322; *Parish v. Scott*, 10 Heisk. 438; *Dart v. Barbour*, 32 Mich. 267; *Cummings v. Freer*, 26 Mich. 128; *Burr v. Hutchinson*, 61 Me. 514; *Huss v. Morris*, 63 Pa. St. 367; *Blakeman v. Blakeman*, 39 Conn. 320; [*Elliott v. Sackett*, 108 U. S. 142; *Kinney v. Ensminger*, 87 Ala. 340 (failure to reserve a grantor's lien); *Felton v. Leigh*, 48 Ark. 498; *McCasland v. Aetna L. Ins. Co.*, 108 Ind. 130; *Courtright v. Courtright*, 63 Iowa, 356; *Bradford v. Carpenter*, 13 Col. 23; *Holcomb v. Mooney*, 13 Or. 503.] *Voluntary deeds*: *Froman v. Froman*, 13 Ind. 317; *Randall v. Ghent*, 19 Ind. 271; *Hunt v. Frazier*, 6 Jones Eq. 90. *Deeds of married women*: *Heaton v. Fryberger*, 38 Iowa, 185; *Leonis v. Lazzarovich*, 55 Cal. 52; *Styers v. Robbins*, 76 Ind. 547; *Purcell v. Goshorn*, 17 Ohio, 105; 49 Am. Dec. 448. [*Conveyance of homestead*: *Parker v. Parker*, 88 Ala. 362; 16 Am. St. Rep. 52; *Gardner v. Moore*, 75 Ala. 394; 51 Am. Rep. 454 (mortgage of homestead); *Connor v. Armstrong*, 86 Ala. 262.]

² *Parlin v. Stone*, 1 McCrary, 443;

Miller v. Davis, 10 Kan. 541; *Albany Sav. Inst. v. Burdick*, 87 N. Y. 40; *Coe v. N. J. Midland R'y*, 31 N. J. Eq. 105; *Wilson v. King*, 27 N. J. Eq. 374; *Wheeler v. Kirtland*, 23 N. J. Eq. 13; *Petesich v. Hambach*, 48 Wis. 443; *First Nat. Bank v. Gough*, 61 Ind. 147; *Wilson v. Stewart*, 63 Ind. 294; *Exchange Bank v. Russell*, 50 Mo. 531; *Schwickerath v. Cooksey*, 53 Mo. 75; *Baskins v. Calhoun*, 45 Ala. 582; *Alexander v. Rea*, 50 Ala. 450; *Goodman v. Randall*, 44 Conn. 321; *Milmine v. Burnham*, 76 Ill. 362; *Quivey v. Baker*, 37 Cal. 465; *Ruhling v. Hackett*, 1 Nev. 360; [*Burkam v. Burk*, 96 Ind. 271; *Cox v. Esteb*, 81 Mo. 393.] *Deeds of trust*: *Allen v. McGaughey*, 31 Ark. 252; *Young v. Coleman*, 43 Mo. 179; *Haynes v. Seachrest*, 13 Iowa, 455.

³ *Henry v. Smith*, 76 N. C. 311; *Mays v. Dwight*, 82 Pa. St. 462; *Murray v. Dake*, 46 Cal. 644; *Campbell v. Hatchett*, 55 Ala. 548; [*Silbar v. Ryder*, 63 Wis. 106.]

⁴ *Knox v. Lycoming F. Ins. Co.*, 50 Wis. 671; *Hearn v. Equitable etc. Ins. Co.*, 4 Cliff. 192; *Dean v. Equitable F. Ins. Co.*, 4 Cliff. 575; *Brugger v. State Invest. Ins. Co.*, 5 Saw. 304; *Hay v. Star F. Ins. Co.*, 77 N. Y. 235; 33 Am. Rep. 607; *Mercantile Ins. Co. v. Jaynes*, 87 Ill. 199; *Mead v. Westchester etc. Ins. Co.*, 64 N. Y. 453; *National Traders' Bank v. Ocean Ins. Co.*, 62 Me. 519; *Keith v. Globe Ins. Co.*, 52 Ill. 518; 4 Am. Rep. 634; *Miaghan v. Hartford F. Ins. Co.*, 12 Hun, 321; *Mackenzie v. Coulson*, L. R. 8 Eq. 368; [*Palmer v. Hartford Ins. Co.*, 54 Conn. 488; *Ben Franklin Ins. Co. v. Gillett*, 54 Md. 212; *Continental Ins. Co. v. Ruckman*, 127 Ill. 364; 11 Am. St. Rep. 121; *Barnes v. Hekla Ins. Co.*, 75 Iowa, 11; 9 Am. St. Rep. 450; *German Fire Ins. Co. v. Gueck*, 130 Ill. 345; *Spurr v. Home Ins. Co.*, 40 Minn. 424.]

⁵ *Emery v. Mohler*, 69 Ill. 221; *Evarts v. Steger*, 5 Or. 147; *Craft v. Dickens*, 78 Ill. 131; *State v. Frank's Adm'r*, 51 Mo. 98; *Schwear v. Haupt*, 49 Mo. 225; *Pickersgill v. Lahens*, 15 Wall. 140; *Garnar v. Bird*, 57 Barb. 277; [*Smith v. Brunk*, 14 Col. 75 (title bond).]

negotiable instruments,¹ marriage and family settlements,² and compromises.³ Judgments and other records may also be corrected.⁴ Other instances are given in the footnote.⁵

§ 1377. **Cancellation and Surrender up or Discharge of Instruments.** — The jurisdiction of equity to grant the remedy of cancellation exists and will always be exercised when it is necessary to protect or maintain equitable primary estates, interests, or rights; where, however, the estate, interest, or right is legal, the jurisdiction always *exists*, but its *exercise* depends upon the adequacy of the legal remedies, — a party being left to his affirmative or defensive remedy at law, where full and complete justice can thereby be done.⁶ The occasions giving rise to the exercise of this

¹ Botsford v. McLean, 42 Barb. 445; 45 Barb. 478; Talley v. Courtney, 1 Heisk. 715; Gammage v. Moore, 42 Tex. 170; Ottenheimer v. Cook, 10 Heisk. 309; Loomis v. Freer, 4 Ill. App. 547; Potter v. Potter, 27 Ohio St. 84; Druff v. Lord Parker, L. R. 5 Eq. 131; [Farr v. Ricker, 46 Ohio St. 265.]

² See vol. 2, §§ 850, 855, 871. See also the following additional cases: Clark v. Girdwood, L. R. 7 Ch. Div. 9; Lovesy v. Smith, L. R. 15 Ch. Div. 655; Welman v. Welman, L. R. 15 Ch. Div. 570; Hanley v. Pearson, L. R. 13 Ch. Div. 545; Lister v. Hodgson, L. R. 4 Eq. 30.

³ See vol. 2, §§ 850, 855, 871, and cases cited.

⁴ Vol. 2, § 871; Partridge v. Harrow, 27 Iowa, 96; 99 Am. Dec. 643; Snyder v. Ives, 42 Iowa, 157; Cohen v. Dubose, Harp. Eq. 102; 14 Am. Dec. 709 (verdict).

⁵ Moran v. McLarty, 75 N. Y. 25 (assignment of mortgage); Kelley v. McKinney, 5 Lea, 164 (contract for sale of land); Stafford v. Fetters, 55 Iowa, 484 (indorsement of note); [Farr v. Ricker, 46 Ohio St. 265 (same)]; Hervey v. Savery, 48 Iowa, 313 (release of mortgage); Mastelar v. Edgerton, 44 Iowa, 495 (agreement establishing highway); Thomas v. Raymond, 4 S. C. 347 (military order; not corrected). As to reforming and correcting mistakes in wills, see vol. 2, § 871.

⁶ Vol. 1, §§ 219-221; vol. 2, §§ 911, 914; Globe Mut. L. Ins. Co. v. Reals, 79 N. Y. 202; Ryerson v. Willis, 81 N. Y. 277 (when mortgage will not be canceled for failure of consideration); Kelly v. Christal, 81 N. Y. 619 (when a judgment will not be set aside); United States v. Throckmorton, 98 U. S. 61 (the same). In the exercise of the remedy of cancellation instruments are almost necessarily directed to be "delivered up." "Delivery up," under these circumstances, can hardly be called a distinct remedy. In England, courts of equity have entertained jurisdiction from the earliest times to decree instruments of a peculiar and exceptional character — as muniments of title — to be delivered up to persons entitled to their custody and possession. The reasons for the exercise of this jurisdiction do not apply in this country: Armitage v. Wadsworth, 1 Madd. 189, 192; Jackson v. Butler, 2 Atk. 306; 9 Mod. 297; Grey v. Cock-eril, 2 Atk. 114; Harrison v. Southcote, 1 Atk. 523, 540; Banbury v. Briscoe, 2 Cas. Ch. 42; Ford v. Peering, 1 Ves. 72; Duncombe v. Mayer, 8 Ves. 320; Francis v. Francis, 2 De Gex, M. & G. 73; Dunn v. Dunn, 7 De Gex, M. & G. 25; Turner v. Letts, 7 De Gex, M. & G. 243; Newton v. Newton, L. R. 6 Eq. 135; Thorpe v. Holdsworth, L. R. 7 Eq. 139; Wilson's Case, L. R. 12 Eq. 516, 521; Waldy v. Gray, L. R. 20 Eq. 238; Jenner v. Morris,

jurisdiction are mistake, fraud, and other instances where enforcing instruments or agreements would be inequitable or unjust.¹ A doubt was formerly entertained as to whether a court of equity ought to exercise its jurisdiction to order instruments absolutely void at law, and not merely voidable, to be delivered up and canceled, since the legal remedy of a party was adequate and complete, and no case was presented for equitable interference;² but it is now well settled that jurisdiction will be exercised in such cases,³ except where the invalidity of the instrument is apparent on its face.⁴ The particular instances in which this remedy is most often given are instruments concerning land,⁵ and negotiable paper

L. R. 1 Ch. 603; *Heath v. Crealock*, L. R. 10 Ch. 22; *Leathes v. Leathes*, L. R. 5 Ch. Div. 221; *James v. Rumsey*, L. R. 11 Ch. Div. 398; *In re Morgan*, L. R. 18 Ch. Div. 93; *In re Cooper*, L. R. 20 Ch. Div. 611.

¹ The various rules as to when jurisdiction will be exercised, and the evidence necessary, in cases of fraud and mistake, have already been discussed, and the reader is referred to the sections on those subjects.

² *Ryan v. Mackmath*, 3 Brown Ch. 15; *Hilton v. Barrow*, 1 Ves. 284; *Bromley v. Holland*, 5 Ves. 610, 618; *Franco v. Bollon*, 3 Ves. 368.

³ Forged deeds: *In re Cooper*, L. R. 20 Ch. Div. 611; *Remington Paper Co. v. O'Dougherty*, 81 N. Y. 474; [*Sharon v. Terry*, 36 Fed. Rep. 337; *Dunn v. Miller*, 96 Mo. 324.] For illustrations of the general rule, see *Hamilton v. Cummings*, 1 Johns. Ch. 517, 520, and cases cited; *Lord St. John v. Lady St. John*, 11 Ves. 526; *Jervis v. White*, 7 Ves. 413; *Simpson v. Lord Howden*, 3 Mylne & C. 97, 102; *Mayor of Colchester v. Lowten*, 1 Ves. & B. 226, 244; *Bromley v. Holland*, 7 Ves. 3, 16; *Hayward v. Dimsdale*, 17 Ves. 111; *Chennel v. Churchman*, 3 Brown Ch. 16, note; *Minshaw v. Jordan*, 3 Brown Ch. 16, note; *Pierce v. Webb*, 3 Belt's Brown Ch. 16, note 2; *Lisle v. Liddle*, 3 Anstr. 649; *Ryan v. Mackmath*, cited 13 Ves. 584; *Jackman v. Mitchell*, 13 Ves. 531; *Peirsoll v. Elliott*, 6 Pet. 95, 98; [*Fitzmaurice v. Mosier*, 116 Ind. 365; 9 Am. St. Rep.

854;] and see cases cited in subsequent notes under this section; [but see *Holland v. Johnson*, 80 Mo. 34.]

⁴ *Gray v. Mathias*, 5 Ves. 286; *Simpson v. Lord Howden*, 3 Mylne & C. 97; *Smyth v. Griffin*, 13 Sim. 245; *Bromley v. Holland*, 7 Ves. 3, 21; *Peirsoll v. Elliott*, 6 Pet. 95, 98; *Van Doren v. Mayor etc.*, 9 Paige, 388. See § 1399, in regard to removing deeds void on their faces, as being clouds on title. As to removing cloud, see also *Strusburgh v. Mayor etc.*, 87 N. Y. 452; *Dederer v. Voorhies*, 81 N. Y. 153; *Wells v. Buffalo*, 80 N. Y. 253; *Townsend v. Mayor etc.*, 77 N. Y. 542 (void tax).

⁵ *Deeds*: The following of the many cases will serve as illustrations: *Blenkinsopp v. Blenkinsopp*, 1 De Gex, M. & G. 495; *Harrison v. Guest*, 6 De Gex, M. & G. 424; *Wright v. Vanderplank*, 8 De Gex, M. & G. 133; *Gresley v. Mousley*, 4 De Gex & J. 78; *Nortcliffe v. Warburton*, 4 De Gex, F. & J. 449; *Clark v. Malpas*, 4 De Gex, F. & J. 401; *Baker v. Monk*, 4 De Gex, J. & S. 388; *Broun v. Kennedy*, 4 De Gex, J. & S. 217; *De Hoghton v. Money*, L. R. 1 Eq. 154; *Lister v. Hodgson*, L. R. 4 Eq. 30; *Heath v. Crealock*, L. R. 10 Ch. 22; *Remington Paper Co. v. O'Dougherty*, 81 N. Y. 474; *Reid v. Burns*, 13 Ohio St. 49; *Hamilton v. Batlin*, 8 Minn. 403; 83 Am. Dec. 787; *Woodruff v. Garner*, 27 Ind. 4; 89 Am. Dec. 477; *Shewmake v. Williams*, 54 Ga. 206; *Lindsey v. Lindsey*, 50 Ill. 79; 99 Am. Dec. 489; *Bayliss v. Williams*, 6 Cold. 440;

before maturity,¹ the legal remedies in these cases being, as a general rule, inadequate. The remedy is also frequently given in case of bonds,² policies of insurance,³

Parrott v. Parrott, 1 Heisk. 681; Bogle v. Hammons, 2 Heisk. 136; Hyer v. Little, 20 N. J. Eq. 443; Warnock v. Campbell, 25 N. J. Eq. 485; Mead v. Coombs, 26 N. J. Eq. 173; Lyons v. Van Riper, 26 N. J. Eq. 337; Yard v. Yard, 27 N. J. Eq. 114; Turner v. Turner, 44 Mo. 535; Davis v. Fox, 59 Mo. 125; Hollocher v. Hollocher, 62 Mo. 267; Davis v. Luster, 64 Mo. 43; Dean v. Younell's Adm'r, 8 Wall. 14, note; Murphy v. Paynter, 1 Dill. 333; Allore v. Jewell, 94 U. S. 506; Barfield v. Price, 40 Cal. 535; Hearst v. Pujol, 44 Cal. 230; Hightower v. Nuber, 26 Ark. 604; Freeman v. Reagan, 26 Ark. 373; Seymour v. Belding, 83 Ill. 222; Stone v. Wilbern, 83 Ill. 105; Hough v. Cook etc. Co., 73 Ill. 23; 24 Am. Rep. 230; Wiley v. Ewalt, 66 Ill. 26; Pickerell v. Morss, 97 Ill. 220; Walton v. Tusten, 49 Miss. 569; Case v. Case, 26 Mich. 484; Ritter v. Ritter, 42 Mich. 108; Rath v. Vanderlyn, 44 Mich. 597; Smith v. Rowley, 66 Barb. 502; Larsen v. Burke, 39 Iowa, 703; Montgomery v. Shockey, 37 Iowa, 107; Benson v. Cowell, 52 Iowa, 137; Cook v. Moore, 39 Tex. 255; Mattair v. Payne, 15 Fla. 682; Morrison v. Morrison, 27 Gratt. 190; Stearns v. Beckham, 31 Gratt. 379; Biglow v. Leabo, 8 Or. 147; Bishop v. Aldrich, 48 Wis. 619. *Mortgages*: Spurgin v. Traub, 65 Ill. 170; Burlington Tp. v. Cross, 15 Kan. 74; Dolan v. Kehr, 9 Mo. App. 351; Connelly v. Fisher, 3 Tenn. Ch. 382; Schenck v. O'Neill, 23 Hun, 209; Foote v. Beecher, 78 N. Y. 155; Schaper v. Schaper, 84 Ill. 603; Starr v. Ellis, 6 Johns. Ch. 393; [Stix v. Sadler, 109 Ind. 255.] *Leases*: Wood v. Hubbell, 10 N. Y. 479; Field v. Herrick, 5 Ill. App. 54; Arnold v. Bright, 41 Mich. 207; Wilson v. Deen, 74 N. Y. 531; Watson etc. Co. v. Casteel, 68 Ind. 476. *Contracts concerning lands*: Roy v. Haviland, 12 Ind. 364; Matlock v. Todd, 25 Ind. 128; Wambaugh v. Bimer, 25 Ind. 368; Brainard v. Holsaple, 4 G. Greene, 485; McGuire v. Bowman, 6 Bush, 550; Belknap v. Sealey, 14 N. Y. 143; 67 Am. Dec. 120; Young v. Hughes, 32 N. J. Eq. 372.

¹ Minshaw v. Jordan, 3 Brown Ch.

17, note; Jervis v. White, 7 Ves. 413; Bishop of Winchester v. Fournier, 2 Ves. Sr. 445; Wynne v. Callander, 1 Russ. 293; Town of Springport v. Teutonia Sav. Bank, 75 N. Y. 397 (cancellation of bonds illegally issued in name of a town, to avoid a multiplicity of suits; a very important decision); Town of Wellsborough v. N. Y. & C. R. R., 76 N. Y. 182 (the same); Western R. R. v. Bayne, 75 N. Y. 1 (surrender up of securities); Gould v. Cayuga Co. etc. Bank, 86 N. Y. 75; Metler's Adm'r's v. Metler, 18 N. J. Eq. 270; 19 N. Y. 457; Hughes v. United States, 4 Wall. 232; Ferguson v. Fisk, 23 Conn. 501; Lewis v. Tobias, 10 Cal. 574; Smith v. Smith's Adm'r, 30 N. J. Eq. 564; Crowe v. Peters, 63 Mo. 429; Hosleton v. Dickinson, 51 Iowa, 244; Fuller v. Percival, 126 Mass. 381; Fowler v. Palmer, 62 N. Y. 533; [Fitzmaurice v. Mosier, 116 Ind. 365; 9 Am. St. Rep. 854; Scarborough v. Scotten, 69 Md. 137; 9 Am. St. Rep. 409 (surrender up of promissory notes); Soper v. Manning, 147 Mass. 126 (surrender up of draft); Shakespear v. Smith, 77 Cal. 638 (cancellation, at suit of tax-payer, of invalid instrument purporting to be drawn against public funds). See also § 914, note.] An injunction against transferring is often given in such cases.

² Jackman v. Mitchell, 13 Ves. 581; Hamilton v. Cummings, 1 Johns. Ch. 517; Town of Venice v. Woodruff, 62 N. Y. 462; 20 Am. Rep. 495; Town of Springport v. Teutonia Sav. Bank, 75 N. Y. 397; Town of Wellsborough v. N. Y. & C. R. R., 76 N. Y. 182; Western R. R. v. Bayne, 75 N. Y. 1; Gould v. Cayuga Co. etc. Bank, 86 N. Y. 75. These cases overrule the decision in Town of Venice v. Woodruff.

³ Whittingham v. Thornburgh, 2 Vern. 506; Traill v. Baring, 4 De Gex, J. & S. 318; Commercial etc. Ins. Co. v. McLoon, 14 Allen, 351; Insurance Co. v. Bailey, 13 Wall. 616; Derrick v. Lamar Ins. Co., 74 Ill. 404; Life Ins. Co. v. Bangs, 103 U. S. 780; Tabor v. Michigan etc. Ins. Co., 44 Mich. 324; Globe etc. Ins. Co. v. Reals, 48 How. Pr. 502; 79 N. Y. 202. [See also §§ 912, note, 914, note.]

settlements and compromises,¹ awards,² and judgments.³

¹ Vol. 2, §§ 850, 855, 875; [Moore v. Cairo etc. R. R. Co., 36 Ark. 262 (a compromise and satisfaction of judgment made by attorney for plaintiff without the latter's knowledge, vacated).]

² Vol. 2, §§ 871, 919; [and see Catlett v. Dougherty, 114 Ill. 568.]

³ Vol. 2, §§ 871, 914, 919. [For a more detailed treatment of the subject of relief against judgments, see §§ 1361, 1364, and notes.] Rescission of a fraudulent sale under a decree: Fisher v. Hersey, 78 N. Y. 387. A judgment will not be set aside on the ground of fraud, when the very fraud alleged was tried and passed upon by the issues of the former action: United States v. Throckmorton, 98 U. S. 61; nor when the facts could have been set up as a complete defense in the former action: Kelly v. Christal, 81 N. Y. 619. For further illustrations of cancellation, see vol. 2, pp. 410, 411, in note under § 914. As to canceling conveyances in fraud of creditors, see vol. 2, §§ 966-974. [As ex-

amples of the cancellation of patents at the suit of the United States, see United States v. American Bell Telephone Co., 128 U. S. 315; United States v. Iron Silver M. Co., 128 U. S. 673; United States v. San Jacinto Tin Co., 125 U. S. 273; United States v. Beebe, 127 U. S. 338; United States v. Minor, 114 U. S. 233. Cancellation of discharge of mortgage: Kinsley v. Davis, 74 Me. 498; cancellation at suit of stockholder of stock unlawfully issued: Wood v. Union etc. Build. Ass'n, 63 Wis. 9. It has been held that by virtue of its jurisdiction in respect to fraud, a court of equity has power to annul a marriage fraudulently procured: Le Brun v. Le Brun, 55 Md. 496. In the novel case of Riggs v. Palmer, 115 N. Y. 506, it was held, by a divided court, that equity has jurisdiction to cancel and annul provisions of a will, and will do so, when the beneficiary under these provisions murders the testator for the purpose of accelerating the time for the enjoyment of the bequest.]

FOURTH GROUP.

REMEDIES BY WHICH ESTATES, INTERESTS, AND PRIMARY RIGHTS, EITHER LEGAL OR EQUITABLE, ARE DIRECTLY DECLARED, ESTABLISHED, OR RECOVERED, OR THE ENJOYMENT THEREOF FULLY RESTORED.

CHAPTER FIRST.

SUITS BY WHICH PURELY LEGAL ESTATES ARE ESTABLISHED, AND THE ENJOYMENT THEREOF RECOVERED: NAMELY, ASSIGNMENT OF DOWER, ESTABLISHMENT OF DISPUTED BOUNDARIES, PARTITION OF LAND, AND OF PERSONAL PROPERTY.

ANALYSIS.

- § 1378. General nature and object of this group.
- § 1379. Nature and object of the first class.
- §§ 1380-1383. Assignment of dower.
- § 1380. Legal remedies.
- § 1381. Origin and grounds of the equitable jurisdiction.
- § 1382. The jurisdiction now concurrent.
- § 1383. Exclusive jurisdiction over dower in equitable estates.
- § 1384. Establishment of disputed boundaries.
- § 1385. The same; equitable incidents and grounds.
- §§ 1386-1390. Partition of lands.
- § 1386. Common-law remedy.
- § 1387. Equitable jurisdiction and remedies.
- § 1388. The title of the plaintiff.
- § 1389. Mode of partition.
- § 1390. Partition by means of a sale.
- § 1391. Partition of personal property.
- § 1392. The same; issue of title.

§ 1378. **General Nature and Object of This Group.** — All the remedies belonging to this group have one most important distinctive feature in common, which is ap-

parent upon even a slight examination. In all of them the estate or interest of the complaining party, whether it be legal or equitable, is *directly* established or recovered, or the enjoyment thereof is *directly* restored. These remedies are not, therefore, provisional or auxiliary, but they are, for the purposes of the complaining party, as truly final or ultimate reliefs as is the judgment in an action of ejectment or of replevin.¹ The estate, interest, or primary right to be established or recovered, or fully enjoyed by their means, may be either legal or equitable; and when it is equitable, the establishment *may* consist in clothing the plaintiff with the legal estate.² The remedies composing this group are separated, by a natural line of division, into *three* general classes, namely: 1. Suits by which purely legal estates are established, and the enjoyment thereof recovered; 2. Suits by which some general right, either legal or equitable, is established; and 3. Suits by which some particular estate or interest, either legal or equitable, is established.

§ 1379. **Nature and Object of the First Class.** — Since the particular cases belonging to this class are primarily adapted to purely legal interests, the common law gives similar relief by means of appropriate legal actions. The jurisdiction of equity was based wholly upon the superi-

¹ This is manifestly so in "assignment of dower," "settlement of disputed boundaries," and "partition of land," since in each of these instances the plaintiff establishes his individual right to and obtains sole possession of a specific tract of land, and in "partition of personal property," he procures the same with respect to specific chattels. The statement is no less true of the other suits included within this group. In a suit to construe a will, estates in specific property are directly established; in suits to quiet title, the very object of the judgment is to declare and establish the plaintiff's legal or equitable estate in some specific property, and perhaps to convert his equitable estate into a legal one. Even in suits to remove a

cloud from title, although the relief is often obtained by means of a cancellation, yet from the nature of the whole proceeding, the plaintiff's estate is thereby established, and he is left in its full enjoyment. In strict foreclosures of mortgages or pledges, and in redemptions of mortgages or pledges, the plaintiff plainly establishes his estate in, and secures his possession of, the specific land or chattels, free from any claim of the defendant. However much these remedies may differ in appearance, they all have this same *essential* element which brings them within the same group.

² As in some statutory suits to quiet title, and some suits to remove a cloud from title.

ority of the equitable methods and procedure; and while the equitable jurisdiction in cases of dower and partition has become so established that it has almost displaced the legal remedies, that of settling disputed boundaries still requires the presence of some special equitable incident or circumstance.¹ I purpose to state the general doctrines and rules which regulate the jurisdiction to grant these remedies, and determine the circumstances under which and the parties between whom it will be exercised.

§ 1380. **Assignment of Dower—Legal Remedies.**—The right known as the wife's right of dower was purely legal, and was asserted at law through the writ of right of dower, and the writ of dower *unde nihil habet*, both of which were in the nature of real actions. As early as the reign of Queen Elizabeth, courts of equity began to assume jurisdiction over cases of dower, but only tentatively, and as ancillary to proceedings at law.² This jurisdiction, originally narrow and auxiliary, has, by the course of decision, and on familiar equitable principles, been expanded to the extent of affording complete relief between the parties.

§ 1381. **Origin and Grounds of the Equitable Jurisdiction.**—Equitable interposition in cases of dower was at first invoked for the removal of impediments in the way of recovery at law. As the title deeds to real estate were held by heirs, devisees, or trustees, it would be important, and even necessary, for the widow, on the event of a contest of her dower, to resort to equity, for the purpose of ascertaining the lands of which her husband had been seised during marriage. To accomplish this purpose, a bill of discovery would be entertained in equity; and where the land of the husband was an undivided interest in a greater portion, equity would decree a partition in aid of the assignment to the widow of her dower.³ This

¹ Under all ordinary circumstances, the action of ejectment is an adequate remedy by which to settle disputed claims to legal titles and estates.

² *Wild v. Wells*, 1 Dick. 3; *Toth.* 82.

³ *Moor v. Black*, Cas. t. Talb. 126.

jurisdiction was, in its earlier stages, strictly auxiliary; and if no obstacle in the way of recognition and assignment of dower at law was disclosed, the equitable proceedings would be arrested.¹ The equitable jurisdiction, having once attached, was not slow in maturing so as to confer full relief. When the widow came into equity for a discovery respecting the title deeds to her husband's estate, which were in the hands of the heir, it was held that she should have complete relief.² If her title to dower was denied, it would be incumbent upon her to establish such title at law. Equity would, for that purpose, retain the bill for a reasonable time, and upon the determination of the issue at law in the widow's favor, would proceed to administer final relief.³

§ 1382. **The Jurisdiction Now Concurrent.**—Although it was thus, at one time, supposed that the jurisdiction of equity was ancillary, and could not attach in the absence of impediments at law, it is now well settled that courts of equity have concurrent jurisdiction in cases of legal dower, or dower in legal estates.⁴ The advantages of the equitable procedure are obvious. An outstanding term could be removed and satisfied;⁵ a partition in the case of undivided interests could be decreed, and an account

¹ *Shute v. Shute*, Prec. Ch. 111; *Wallis v. Everard*, 3 Ch. Rep. 161.

² *Curtis v. Curtis*, 2 Brown Ch. 620, 631, 632.

³ *Curtis v. Curtis*, *supra*; *Mundy v. Mundy*, 2 Ves. 122, 128; *D'Arcy v. Blake*, 2 Schoales & L. 387; *Swaine v. Perine*, 5 Johns. Ch. 482; 9 Am. Dec. 318; *Hartshorne v. Hartshorne*, 2 N. J. Eq. 349; *Rockwell v. Morgan*, 13 N. J. Eq. 384; *Wells v. Beall*, 2 Gill & J. 458; [*Ocean Beach Ass'n v. Brinley*, 34 N. J. Eq. 439.] And assuming the widow's title to be established or conceded, equity will not only assist her by way of discovery and assignment, but will decree her a due share of the mesne profits, and this, not from the time of the demand merely, but from the time when her title accrued: *Dormer v. Fortescue*, 3 Atk. 124, 130; *Chase's Case*, 1 Bland, 206; 17 Am. Dec. 277; *Wells v. Beall*,

2 Gill & J. 458; *Keith v. Trapier*, Bail. Eq. 63; *Hazen v. Thurber*, 4 Johns. Ch. 604; [*Phinney v. Johnson*, 15 S. C. 158.]

⁴ In a leading case the question was presented on the pleadings, which failed to disclose any impediment in the way of a proceeding at law, but the court determined in favor of the jurisdiction: *Mundy v. Mundy*, 2 Ves. 122. And such is now the established doctrine in England and in the United States: *Pulteney v. Warren*, 6 Ves. 73, 89; *Strickland v. Strickland*, 6 Beav. 77; *Herbert v. Wren*, 7 Cranch, 370; *Powell v. Monson etc. Mfg. Co.*, 3 Mason, 347; *Hazen v. Thurber*, 4 Johns. Ch. 604; *Swaine v. Perine*, 5 Johns. Ch. 482; 9 Am. Dec. 318; *Badgley v. Bruce*, 4 Paige, 98; *Hartshorne v. Hartshorne*, 2 N. J. Eq. 349; [*Thomas v. Thomas*, 73 Iowa, 657.]

⁵ *Dormer v. Fortescue*, 3 Atk. 124, 130.

could be taken;¹ fraudulent conveyances could be canceled;² and antagonistic claims to the subject-matter could be determined without multiplicity of suits.³ Equity will also award damages which could not be recovered at law on an application for dower. At law, if the tenant dies after judgment, and before assessment of damages, the damages are lost to the widow; and if she herself dies before such assessment of damages, her personal representatives are without recourse. In these instances, the widow, or her personal representatives, by a resort to equity, obtain adequate relief.⁴

§ 1383. **Exclusive Jurisdiction over Dower in Equitable Estates.**—In England since the statute of 3 and 4 William IV.,⁵ and in the United States from an early day, equity has assumed an exclusive jurisdiction over claims for dower in equitable estates.⁶ Where the husband's estate was an equity of redemption, the widow may proceed against the mortgagee by a bill in equity to redeem.⁷ Where the husband's estate was a portion of the assets of a partnership, and where the settlement of the partnership affairs has been unconscionably protracted, the widow may appeal to equity for relief.⁸ If the husband should die seised of land on which a part of the purchase-money was due, the widow may resort to equity for a sale of the land in satisfaction of the unpaid balance, and for her dower in the surplus.⁹ On the conversion of the husband's estate into money, equity will award to the widow her

¹ *Hill v. Gregory*, 56 Miss. 341; *Nye v. Patterson*, 35 Mich. 413; *Herbert v. Wren*, 7 Cranch, 370.

² *Swaine v. Perine*, 5 Johns. Ch. 482; 9 Am. Dec. 318; [*Jones v. Jones*, 71 Wis. 514; *Jones v. Van Doren*, 130 U. S. 684.]

³ *Goodburn v. Stevens*, 1 Md. Ch. 420.

⁴ *Curtis v. Curtis*, 2 Brown Ch. 620, 632; *Dormer v. Fortescue*, 3 Atk. 124, 130; *Mordant v. Thorold*, 2 Lev. 275; [*Jones v. Jones*, 71 Wis. 514; *Jones v. Van Doren*, 130 U. S. 684.]

⁵ Chapter 105.

⁶ *McMahan v. Kimball*, 3 Blackf. 1.

⁷ *Dawson v. Bank of Whitehaven*, L. R. 4 Ch. Div. 639; *Anderson v. Pignet*, L. R. 11 Eq. 329; *Gibson v. Crehore*, 3 Pick. 475; *Farwell v. Cotting*, 8 Allen, 211; *Chiswell v. Morris*, 14 N. J. Eq. 101; *Eldridge v. Eldridge*, 14 N. J. Eq. 195.

⁸ *Goodburn v. Stevens*, 1 Md. Ch. 420.

⁹ *Danton v. Nanny*, 8 Barb. 618; *Thompson v. Cochran*, 7 Humph. 72; 46 Am. Dec. 68; *Daniel v. Leitch*, 13 Gratt. 195.

proportionate share.¹ And where the husband has sought, by fraudulent conveyances, to defeat the wife's dower, equity will, on her application, grant appropriate relief.² The widow's right of dower, while yet unmeasured and unassigned, may be transferred by her, or reached by her judgment creditors, and her voluntary transferee, or the receiver appointed in aid of the judgment creditor, may maintain a suit in equity to have the dower assigned to him.³ The assignment of dower is usually effected by a reference to a master and a commission, and the share is set out by metes and bounds. Where an account is needed, it may be taken by means of a similar reference. In many of our states summary proceedings have been provided by statute for the assignment of dower, especially where the widow's right thereto is not contested.

§ 1384. **Establishment of Disputed Boundaries.** — Where the boundaries between two adjacent parcels of land, even when held by their respective owners under purely legal titles, have become confused or obscure, equity has, from an early period, exercised a jurisdiction

¹ In *re Hall's Estate*, L. R. 9 Eq. 179; *Lawrence v. Miller*, 1 Sand. 516; *Higbie v. Westlake*, 14 N. Y. 281.

² *Swaine v. Perine*, 5 Johns. Ch. 482; 9 Am. Dec. 318; *Holmes v. Holmes*, 3 Paige, 363; *Tate v. Tate*, 1 Dev. & B. Eq. 22; *Petty v. Petty*, 4 B. Mon. 215; 39 Am. Dec. 501; *London v. London*, 1 Humph. 1; *Smart v. Waterhouse*, 10 Yerg. 94; *Davis v. Davis*, 5 Mo. 183; [*Jones v. Jones*, 71 Wis. 514; *Bear v. Stahl*, 61 Mich. 203; *Straat v. O'Neil*, 74 Mo. 69; *Manikee v. Beard*, 85 Ky. 20; as to what conveyances by the husband are not fraudulent, see *Hamilton v. Smith*, 57 Iowa, 15; 42 Am. Rep. 39; *Williams v. Williams*, 40 Fed. Rep. 521; *Fennessey v. Fennessey*, 84 Ky. 519; 4 Am. St. Rep. 210.] As to the defense of a *bona fide* purchase for value without notice, against the widow suing in equity for her dower, see *ante*, vol. 2, § 765; *Joyce v. De Moleyns*, 2 Jones & L. 374; *Jerrard v.*

Saunders, 2 Ves. 254; *Snelgrove v. Snelgrove*, 4 Desaus. Eq. 274; *Blain v. Harrison*, 11 Ill. 384; *Larrowe v. Beam*, 10 Ohio, 498; *Blake v. Heyward*, Bail. Eq. 208; *Campbell v. Murphy*, 2 Jones Eq. 357; *Ridgeway v. Newbold*, 1 Harr. (Del.) 385; *Jenkins v. Bodley*, *Smedes & M. Ch.* 338; *Wailles v. Cooper*, 24 Miss. 208; *Daniel v. Hollingshead*, 16 Ga. 190.

³ *Potter v. Everitt*, 7 Ir. R. Eq. 152 (transferee); *Payne v. Becker*, 87 N. Y. 153 (receiver appointed in aid of an execution); *Tompkins v. Fonda*, 4 Paige, 448 (receiver); *Stewart v. McMartin*, 5 Barb. 438 (same); *Strong v. Clem*, 12 Ind. 37; 74 Am. Dec. 200 (transferee); [*Pope v. Mead*, 99 N. Y. 201; *Bostwick v. Beach*, 103 N. Y. 414; *McKenzie v. Donald*, 61 Miss. 452; *Payne v. Becker*, 87 N. Y. 153; *Boltz v. Stoltz*, 41 Ohio St. 540; *McMahon v. Gray*, 150 Mass. 289; 15 Am. St. Rep. 202; but see *Maxon v. Nancy*, 14 R. I. 641.]

to settle them.¹ Whether this jurisdiction originated in the consent of the parties, and proceeded by analogy to the writs *de rationalibus divisis* and *de perambulatione facienda* used at law,² or arose in avoidance of a multiplicity of suits,³ has been discussed; but the determination of the question remains uncertain and conjectural. The mere fact, however, that certain boundaries are in controversy is not of itself sufficient to authorize the interference of equity; and upon such a showing, the parties would be left to their rights and remedies at law. Courts of equity will not interpose to ascertain boundaries, unless, in addition to a naked confusion of the controverted boundaries, there is suggested some peculiar equity, which has arisen from the conduct, situation, or relations of the parties.⁴

§ 1385. **Equitable Incidents and Grounds.** — The fraud or neglect of duty of the party against whom relief is sought by way of establishment of boundaries will afford a sufficient ground for equitable interference.⁵ And where a settlement of the boundaries in dispute cannot be had at law without a multiplicity of suits, relief may be obtained in equity.⁶ It may happen that such a rela-

¹ Wake v. Conyers, 1 Eden, 331; 2 Lead. Cas. Eq., 4th Am. ed., 850, 853, 860; Mullineux v. Mullineux, Toth. 39; Peckering v. Kimpton, Toth. 39; Boteler v. Spelman, Finch, 96; Perry v. Pratt, 31 Conn. 433.

² Speer v. Crawter, 2 Mer. 410, 417.

³ Wake v. Conyers, *supra*.

⁴ Wake v. Conyers, *supra*; Miller v. Warmington, 1 Jacob & W. 484; Speer v. Crawter, 2 Mer. 410, 417; Atkins v. Hatton, 2 Anstr. 386; O'Hara v. Strange, 11 Ir. R. Eq. 262; Ireland v. Wilson, 1 Ir. R. Ch. 623; St. Lukes v. St. Leonards, cited 2 Anstr. 395; Perry v. Pratt, 31 Conn. 433; Wolcott v. Robbins, 26 Conn. 236; De Veney v. Gallagher, 20 N. J. Eq. 33; Norris's Appeal, 64 Pa. St. 275; Tillmes v. Marsh, 67 Pa. St. 507; Merriman v. Russell, 2 Jones Eq. 470; Hill v. Proctor, 10 W. Va. 59; Fraley v. Peters, 12 Bush, 469; Doggett v. Hart, 5 Fla. 215; 58 Am. Dec. 464; Wolf v. Scar-

borough, 2 Ohio St. 361; Hale v. Darter, 5 Humph. 79; Topp v. Williams, 7 Humph. 569; Wetherbee v. Dunn, 36 Cal. 249; [Cresap v. Kemble, 26 W. Va. 603; Pendry v. Wright, 20 Fla. 828; Nye v. Hawkins, 65 Tex. 600; Scott v. Means, 40 Ky. 460; Wykes v. Ringleberg, 49 Mich. 567; Wilson v. Hart, 98 Mo. 618.]

⁵ Atkins v. Hatton, 2 Anstr. 386; Rous v. Barker, 4 Brown Parl. C. 660; Speer v. Crawter, 2 Mer. 410, 418; Duke of Leeds v. Earl of Strafford, 4 Ves. 180; Grierson v. Eyre, 9 Ves. 341, 345; Pratt v. Bryant, 20 Vt. 333; Perry v. Pratt, 31 Conn. 433; Fraley v. Peters, 12 Bush, 469.

⁶ Wake v. Conyers, *supra*; Bouverie v. Prentice, 1 Brown Ch. 200; Marquis of Bute v. Glamorganshire Can. Co., 1 Phill. Ch. 681; Whaley v. Dawson, 2 Schoales & L. 367, 370; Commissioners etc. v. Glasse, 41 L. J. Ch. 409; [Beatty v. Dixon, 56 Cal. 622.]

tion exists between the parties as to make it incumbent upon one of them to preserve the boundaries. Such would be the case where one of the parties was a tenant or a copyholder; and in all such cases, equity will entertain the suit of the aggrieved party — as of a landlord — to compel the defendant — as in the example, a tenant — to preserve the boundaries from confusion.¹ In the case of a rent-charge, where, by reason of a confusion of the boundaries, the remedy of distress is defeated, a court of equity will issue a commission to fix the boundaries.² Where several parcels of land allotted to the holders of certain offices were for a number of years in the possession of a single occupant, who held all the offices, it would seem that a confusion of boundaries resulting from such holding would furnish a sufficient ground for the equitable relief.³ It is necessary for the complainant to show that some portion of the lands, in respect of which the relief of establishing their boundaries is sought, is in the possession of the defendant.⁴

§ 1386. Partition of Lands — Common-law Remedy. —

At common law, the writ of partition lay only in case of lands held in coparcenary.⁵ The remedy was afterwards extended by statute to joint tenancies and tenancies in

¹ *Aston v. Lord Exeter*, 6 Ves. 288; *Miller v. Warmington*, 1 Jacob & W. 484; *Att'y-Gen. v. Fullerton*, 2 Ves. & B. 263; *Speer v. Cawter*, 17 Ves. 216; *Duke of Leeds v. Earl of Strafford*, 4 Ves. 180; *Godfrey v. Littell*, 1 Russ. & M. 59; 2 Russ. & M. 630; *Att'y-Gen. v. Stephens*, 6 De Gex, M. & G. 111, 133; *Clayton v. Cookes*, 2 Atk. 449; *Spike v. Harding*, L. R. 7 Ch. Div. 871.

² *Bowman v. Yeat*, cited 1 Ch. Cas. 145; *Duke of Leeds v. Powell*, 1 Ves. Sr. 171; *North v. Earl of Strafford*, 3 P. Wms. 148; *Duke of Leeds v. Corp. of New Radnor*, 2 Brown Ch. 338; *Att'y-Gen. v. Stephens*, 6 De Gex, M. & G. 111; *Mayor etc. v. Lord Bolton*, 1 Drew. 270, 289.

³ *Kennedy v. Trott*, 6 Moore P. C. C. 449, 467.

⁴ *Att'y-Gen. v. Stephens*, 6 De Gex, M. & G. 111; *Godfrey v. Littell*, 1 Russ. & M. 59; 2 Russ. & M. 630. As to the parties in suits to establish boundaries, all persons interested, whether their estates are present or future, remaindermen, and reversioners should be made parties, although, of course, all need not be joined as plaintiffs: 1 *Daniell's Chancery Practice*, 209; *Rayley v. Best*, 1 Russ. & M. 659; *Miller v. Warmington*, 1 Jacob & W. 484; *Speer v. Cawter*, 2 Mer. 410; *Att'y-Gen. v. Stephens*, *supra*; *Pope v. Melone*, 2 A. K. Marsh. 239.

⁵ The reason given was, that as tenancy in coparcenary arose by operation of law, it was only proper that the law should afford the means of severance.

common.¹ Where the tenure was copyhold, partition might be had in the lord's court by a plaint in the nature of a writ of partition. As the plaint and the writ have both been abolished by statute,² this jurisdiction of equity is now, in the absence of statutory provision, exclusive. The operation of the common-law remedy, even after its extension to joint tenancies and tenancies in common, was imperfect and narrow. The writ of partition lay only against the tenant in possession, and was incompetent to reach the remainderman or the reversioner. As the judgment at law proceeded according to the titles proved, it was necessary for the plaintiff to show the title of the defendant as well as his own. And as partition at law was made by the sheriff by actual division, it might happen that, where the undivided interests were incapable of exact apportionment, the judgment of the court would be powerless to compensate the inequalities.

§ 1387. **Equitable Jurisdiction and Remedies.** — These difficulties, illustrating the inadequacy of the legal remedy, gave rise to the equitable interference. As early as the reign of Elizabeth, partition became a matter of equitable cognizance;³ and now the jurisdiction is established as of right in England and in the United States.⁴ The remedy in equity is not confined to the

¹ 31 Henry VIII., c. 1; 32 Henry VIII., c. 32.

² 3 & 4 Wm. IV., c. 27.

³ 1 Fonblanque's Equity, b. 1, c. 1, sec. 3, note f; Speke v. Walrond, Toth. 155.

⁴ Agar v. Fairfax, 17 Ves. 533; 2 Lead. Cas. Eq., 4th Am. ed., 865, 880, 894; Baring v. Nash, 1 Ves. & B. 551; Parker v. Gerard, Amb. 236; Wood v. Little, 35 Me. 107; Bailey v. Sisson, 1 R. I. 233; Donnell v. Mateer, 7 Ired. Eq. 94; Holmes v. Holmes, 2 Jones Eq. 334; Howey v. Goings, 13 Ill. 95; 54 Am. Dec. 427. And see Wotten v. Copeland, 7 Johns. Ch. 140; Sebring v. Mersereau, Hopk. Ch. 501; 9 Cow. 344; Harwood v. Kirby, 1 Paige, 469; Teal v. Woodworth, 3

Paige, 470; Wilkinson v. Parish, 3 Paige, 653; Burhans v. Burhans, 2 Barb. Ch. 398; Van Arsdale v. Drake, 2 Barb. 599; Green v. Putnam, 1 Barb. 500; Tanner v. Niles, 1 Barb. 560; Scott v. Guernsey, 60 Barb. 163; 48 N. Y. 106; Mead v. Mitchell, 17 N. Y. 210; 72 Am. Dec. 455; Clemens v. Clemens, 37 N. Y. 59; Gregory v. Gregory, 69 N. C. 522; Tabler v. Wiseman, 2 Ohio St. 207; Williams v. Van Tuyl, 2 Ohio St. 336; Gregory v. High, 29 Ind. 527; Milligan v. Poole, 35 Ind. 64; Larned v. Renshaw, 37 Mo. 458; Waugh v. Blumenthal, 28 Mo. 462; Reinhardt v. Wendec, 40 Mo. 577; De Uprey v. De Uprey, 27 Cal. 329; 87 Am. Dec. 81; Gates v. Salmon, 35 Cal. 576; 95 Am. Dec. 139; [Nash

tenants in possession, but extends to all persons interested, whether presently or in expectancy; and remaindermen, reversioners, infants, and persons not *in esse* may be bound by the decree.⁴

§ 1388. **The Title of the Plaintiff.**—The difficulty under which the complainant labored at law in proving the title as well of the defendant as of himself is, in equity, obviated by a discovery, and if need be by a reference to the master. The complainant must show title in himself, and such a title as will establish his right, as against the defendant, to a partition.² Where the com-

v. Simpson, 78 Me. 142; Lindsey v. Brewer, 60 Vt. 627; McMath v. De Bardelaben, 75 Ala. 68; Hill v. Reno, 112 Ill. 154; 54 Am. Rep. 222.]

¹ Lord Brook v. Lord Hertford, 2 P. Wms. 518; Gaskell v. Gaskell, 6 Sim. 643; Hobson v. Sherwood, 4 Beav. 184; Wills v. Slade, 6 Ves. 498; [Duke v. Harris, 107 Pa. St. 57; Gayle v. Johnston, 80 Ala. 395; Black v. Washington, 65 Miss. 60; Hill v. Reno, 112 Ill. 154; 54 Am. Rep. 222; Calland v. Conway, 14 R. I. 9.] But while all persons interested in the land, whether in possession or in expectancy, are proper parties to a bill in partition, only those in possession are entitled to file the bill: Evans v. Bagshaw, L. R. 8 Eq. 469; L. R. 5 Ch. 340; Agar v. Fairfax, 2 Lead. Cas. Eq. 880, 894; [Wood v. Sugg, 91 N. C. 93; 49 Am. Rep. 639; Osborne v. Mull, 91 N. C. 203; Cannon v. Lomax, 29 S. C. 369; 13 Am. St. Rep. 739; Savage v. Savage, 19 Or. 120; 20 Am. St. Rep. 795; but in several states co-tenants out of possession may compel partition: McCloskey v. Barr, 42 Fed. Rep. 609.] The mortgagors of undivided interests may have partition of the equity of redemption: Wotten v. Copeland, 7 Johns. Ch. 140. But the mortgagees and judgment creditors of tenants in common are not proper, or at least not necessary, parties to a bill of partition: Sebring v. Mersereau, 9 Cow. 344; Harwood v. Kirby, 1 Paige, 469; Low v. Holmes, 17 N. J. Eq. 148; Speer v. Speer, 14 N. J. Eq. 240; Thruston v. Minke, 32 Md. 571; [Stewart v. Allegheny Nat. Bank, 101 Pa. St. 342.] Where a mortgagee's interests require that he should be joined, he may be made a party: Whitton v. Whitton, 38 N. H.

127, 135; 75 Am. Dec. 163. It has been held that the mortgagee of an undivided share may sue in equity for a foreclosure and partition, and obtain a receiver of the rents and profits issuing out of the share of the mortgagor: Fall v. Elkins, 9 Week. Rep. 861. In general, all the tenants in common or joint tenants should be made parties; but all need not be plaintiffs: Anonymous, 3 Swanst. 139, note; Cornish v. Gest, 2 Cox, 27; Brashear v. Macey, 3 J. J. Marsh. 89; Braker v. Devereaux, 8 Paige, 513; Borah v. Archers, 7 Dana, 176; Rosekrans v. White, 7 Lans. 486 (wife of tenant); Scott v. Guernsey, 60 Barb. 163, 181 (administrator of deceased tenant); Sullivan v. Sullivan, 4 Hun, 198; [Holbrook v. Bowman, 62 N. H. 313 (grentee of tenant).] Suit by a lessee of a share without making his lessor a party: Baring v. Nash, 1 Ves. & B. 551; Heaton v. Dearden, 16 Beav. 147. As to how far a decree between tenants for life will bind future contingent interests, see Wotten v. Copeland, 7 Johns. Ch. 140; Mead v. Mitchell, 17 N. Y. 210, 214; 72 Am. Dec. 455; Clemens v. Clemens, 37 N. Y. 59; Striker v. Mott, 2 Paige, 387, 389; 22 Am. Dec. 646; Woodworth v. Campbell, 5 Paige, 518; Gaskell v. Gaskell, 6 Sim. 643. See Pomeroy on Remedies, sec. 254; [also Monarque v. Monarque, 80 N. Y. 326; Mayer v. Hover, 81 Ga. 308.] With reference to parties defendant, and especially the legislation of various states on that subject, see Pomeroy on Remedies, secs. 373-377.

² Agar v. Fairfax, *supra*; Jope v. Morshead, 6 Beav. 213; Parker v. Gerard, Amb. 236; [Rich v. Bray, 37 Fed. Rep. 273.]

plainant's legal title is disputed, courts of equity decline the jurisdiction to try this question; but, in analogy to the case of dower, they will retain the bill for a reasonable time, until the issue of title has been determined at law.¹ If the disputed titles are equitable, courts of equity will exercise jurisdiction to settle them, and will then grant final relief by way of partition, under the same bill.² Where the subject-matter of the suit is an equitable estate³ or an incorporeal hereditament,⁴ a partition may be had in equity.

§ 1389. Mode of Partition — Pecuniary Compensation.

—In the original jurisdiction of equity the partition was effected by means of mutual conveyances; and where the land was incapable of exact or fair division, the court had power to compensate for the inequality by awarding what was known as "owelty of partition," being a pecuniary compensation, or a charge upon the land by way of rent, servitude, or easement.⁵ And if one of the joint owners or owners in common has received more than his

¹ *Slade v. Barlow*, L. R. 7 Eq. 296; *Giffard v. Williams*, L. R. 5 Ch. 546; *Bolton v. Bolton*, L. R. 7 Eq. 298, note; *Potter v. Waller*, 2 De Gex & S. 410; *Simpson v. Wallace*, 83 N. C. 477; *Mattair v. Payne*, 15 Fla. 682; *Hardy v. Mills*, 35 Wis. 141; *Hoffman v. Beard*, 22 Mich. 59; *Wilkin v. Wilkin*, 1 Johns. Ch. 111, 118; *Manners v. Manners*, 2 N. J. Eq. 384; 35 Am. Dec. 512; *Curran v. Spraul*, 10 Gratt. 145; [*Nash v. Simpson*, 78 Me. 142; *Pierce v. Rollins*, 83 Me. 172; *Fenton v. Steere*, 76 Mich. 405; *Seymour v. Ricketts*, 21 Neb. 240. In several states, courts of equity are authorized by statute to determine questions of title arising in partition suits: See *Bradley v. Zehner*, 82 Va. 685; *McMath v. De Bardelaben*, 75 Ala. 68; *Street v. Benner*, 20 Fla. 700; *Gage v. Bissell*, 119 Ill. 298; *Hogg v. Berryman*, 41 Ohio St. 81; 52 Am. Rep. 71.]

² *Crosier v. McLaughlin*, 1 Nev. 348; *Leverton v. Waters*, 7 Cold. 20; *Ross v. Cobb*, 48 Ill. 111; *Foust v. Moorman*, 2 Ind. 17; *Donnell v. Mateer*, 7 Ired. Eq. 94; *Carter v. Taylor*, 3 Head,

30; *Obert v. Obert*, 10 N. J. Eq. 98; *Longwell v. Bentley*, 23 Pa. St. 99; [*Read v. Huff*, 40 N. J. Eq. 233; *Hayes's Appeal*, 123 Pa. St. 110; *Lynch v. Lynch*, 18 Neb. 586.]

³ *Hitchcock v. Skinner*, Hoff. Ch. 21; *Crosier v. McLaughlin*, 1 Nev. 348; [*Aspen M. & S. Co. v. Rucker*, 28 Fed. Rep. 220.]

⁴ *Bailey v. Sisson*, 1 R. I. 233. [Of water-power: *Clark v. Stewart*, 56 Wis. 154.]

⁵ *Earl of Clarendon v. Hornby*, 1 P. Wms. 446; *Turner v. Morgan*, 8 Ves. 143; *Story v. Johnson*, 2 Younge & C. 586; *Horncastle v. Charlesworth*, 11 Sim. 315; *Mole v. Mansfield*, 15 Sim. 41; *Smith v. Smith*, 10 Paige, 470; *Larkin v. Mann*, 2 Paige, 27; *Phelps v. Green*, 3 Johns. Ch. 302; *Haywood v. Judson*, 4 Barb. 228; *Norwood v. Norwood*, 4 Har. & J. 112; *Warfield v. Warfield*, 5 Har. & J. 459; *Cox v. McMullin*, 14 Gratt. 82; *Wynne v. Tunstall*, 1 Dev. Eq. 23; *Graydon v. Graydon*, *McMull. Eq.* 63; *Oliver v. Jernigan*, 46 Ala. 41; [*Cheatham v. Crews*, 83 N. C. 38; and see *Field v. Leiter*, 117 Ill. 341.]

share of the rents and profits, the court will direct an account for the purpose of decreeing a reimbursement.¹ And if it should appear that one of the parties had made improvements on the land of which partition is sought, he will be awarded suitable compensation.² The inconvenience or difficulty attending the partition is no ground for refusing the relief.³

§ 1390. **Partition by Means of a Sale.**—On account of the difficulty of making an equable apportionment and division of the land, it might sometimes be expedient for the court to order a sale of the property and a division of the proceeds. By the original equitable jurisdiction, independent of any statute, if all the parties *sui juris* were willing, the court had power to decree a sale; and this, even though infants might be among the parties interested.⁴ But where one of the parties *sui juris* refused his consent, the court had no option but to proceed with the ordinary mode of partition.⁵ This restriction has in

¹ *Lorimer v. Lorimer*, 5 Madd. 363; *Hill v. Fulbrook*, Jac. 574; *Story v. Johnson*, 2 Younge & C. 586; *Leach v. Beattie*, 33 Vt. 195; *Hitchcock v. Skinner*, Hoff. Ch. 21; *Early v. Friend*, 16 Gratt. 21; 78 Am. Dec. 649; *Carter's Ex'r v. Carter*, 5 Munf. 108; *Backler v. Farrow*, 2 Hill Ch. 111; *Rozier v. Griffith*, 31 Mo. 171; [*Fry v. Payne*, 82 Va. 759; *Arnett v. Munnerlyn*, 71 Ga. 14; *Lowe v. Burke*, 79 Ga. 164; *Nash v. Simpson*, 78 Me. 142; *Annely v. De Saussure*, 26 S. C. 497; 4 Am. St. Rep. 725; *Bridgford v. Barbour*, 80 Ky. 529. See also § 1421, note.]

² *Swan v. Swan*, 8 Price, 518; *Green v. Putnam*, 1 Barb. 500; *Conklin v. Conklin*, 3 Sand. Ch. 64; *St. Felix v. Rankin*, 3 Edw. Ch. 323; *Brookfield v. Williams*, 2 N. J. Eq. 341; *Obert v. Obert*, 5 N. J. Eq. 397; *Sneed's Heirs v. Atherton*, 6 Dana, 276; 32 Am. Dec. 70; *Borah v. Archers*, 7 Dana, 176; *Respass v. Breckenridge's Heirs*, 2 A. K. Marsh. 581; *Dean v. O'Meara*, 47 Ill. 120; *Martindale v. Alexander*, 26 Ind. 104; 87 Am. Dec. 458. [See also § 393, note; *Curtis v. Poland*, 66 Tex. 511; *Scantlin v. Allison*, 32 Kan. 376; and see *Buck v. Martin*, 21 S. C. 590;

53 Am. Rep. 702. Such party will generally be awarded the portion of the land upon which the improvements have been made, where it is possible so to do: *Ford v. Knapp*, 102 N. Y. 140; 55 Am. Rep. 782; *Kelsey's Appeal*, 113 Pa. St. 119; 57 Am. Rep. 444; *Dagan v. Mayor*, 70 Md. 1; *Wilkinson v. Stuart*, 74 Ala. 198; *Elvod v. Keller*, 89 Ind. 382; *Emerick v. Alvarado*, 90 Cal. 444, 454.]

³ *Warner v. Baynes*, Amb. 589; *Parker v. Gerard*, Amb. 236. In one case the doctrine was carried to the extent of making partition of a house by building a wall through the middle of it: *Turner v. Morgan*, 8 Ves. 143. Where the defendants, however, objected to the division of their own shares, the partition would be confined to the setting out and severing the share of the complainant: *Hobson v. Sherwood*, 4 Beav. 184.

⁴ *Davis v. Turvey*, 32 Beav. 554; *Hubbard v. Hubbard*, 2 Hem. & M. 38; *Thackeray v. Parker*, 1 N. R. 567.

⁵ *Griffies v. Griffies*, 11 Week. Rep. 943; *Wood v. Little*, 35 Me. 107; *Codman v. Tinkham*, 15 Pick. 364; [*Lyon v. Powell*, 78 Ala. 351.]

England been removed by a modern statute.¹ In the United States an unqualified power of sale has been conferred on the courts in very many of the states, the power to be exercised whenever it shall appear to the court, independently of the consent of the parties, that a sale would be more beneficial, or less injurious, than an actual division.² As between a sale and a partition, however, the courts will *favor* a partition, as not disturbing the existing form of the inheritance.³

§ 1391. **Partition of Personal Property—Equitable Jurisdiction and Remedy.**—The rules and proceedings which obtained at common law and by statute on the subject of partition related exclusively to real estate.⁴ At common law the co-owner of a chattel could maintain an action respecting the common property against his co-tenant only where a loss, destruction, or sale of the property was provable against the defendant.⁵ However expedient the partition of chattels might appear, or however desirable it might be to the co-tenants, the common law furnished no instrumentality by which the partition could be judicially effected. There was not merely an inadequacy of legal remedy, there was an utter absence of it. The situation clearly demanded the intervention of equity. And although the inception of the equitable jurisdiction for the partition of chattels is not traceable with certainty, the jurisdiction itself is unquestioned; and where a literal partition is not practicable, the court will order a sale.⁶

¹ 31 & 32 Vict., c. 40.

² Thompson v. Hardman, 6 Johns. Ch. 436; McCall's Appeal, 56 Pa. St. 363; Matter of Skinner's Heirs, 2 Dev. & B. Eq. 63; Steedman v. Weeks, 2 Strob. Eq. 145; 49 Am. Dec. 660; Royston v. Royston, 13 Ga. 425; Wilson v. Duncan, 44 Miss. 642; Higginbottom v. Short, 25 Miss. 160; 57 Am. Dec. 198; Graham v. Graham, 8 Bush, 334; Welsh v. Freeman, 21 Ohio St. 402; [Wilson v. Green, 63 Md. 547; Marshall v. Marshall, 86 Ala. 383.]

³ Davidson v. Thompson, 22 N. J. Eq. 83; Thruston v. Minke, 32 Md. 571; Graham v. Graham, 8 Bush, 334.

⁴ Allnatt on Partition, 48.

⁵ Gilbert v. Dickerson, 7 Wend. 449; 22 Am. Dec. 592; Tinney v. Stebbins, 28 Barb. 290; Cowles v. Garrett's Adm'rs, 30 Ala. 341; Hinds v. Terry, Walk. (Miss.) 80.

⁶ Tripp v. Riley, 15 Barb. 333; Fobes v. Shattuck, 22 Barb. 568; Tinney v. Stebbins, 28 Barb. 290; Wetmore v. Zabriskie, 29 N. J. Eq. 62;

§ 1392. **The Issue of Title.**—In the partition of real estate, the rule was well settled, that where the title of the complainant was put in issue, a court of equity would suspend its interference until the question of title had been determined at law in an action of ejectment. But no ejectment lay to try the title to personalty. A refusal, then, by a court of equity, in proceedings for the partition of chattels, to pass upon an issue of title would be tantamount to a complete failure of justice. Courts of equity, therefore, when partition of personalty is sought, have of necessity departed from the analogies of the law of real estate, and have assumed jurisdiction to determine as well the issue of title as any other issue pertinent to the case.¹

Crapster v. Griffith, 2 Bland, 525; money judgments cannot be partitioned.]

Smith v. Smith, 4 Rand. 95, 102; Kerley v. Clay, 4 Bibb, 241; Marshall v. Crow's Adm'r, 29 Ala. 278; Conover v. Earl, 26 Iowa, 167. [See Spaulding v. Warner, 59 Vt. 646, and Moorers v. Moorers, 84 Ala. 353, to the effect that

¹ Weeks v. Weeks, 5 Ired. Eq. 111; 47 Am. Dec. 358; Edwards v. Bennett, 10 Ired. 363; Smith v. Dunn, 27 Ala. 315; [Godfrey v. White, 60 Mich. 443; 1 Am. St. Rep. 537.]

CHAPTER SECOND.

SUITS BY WHICH SOME GENERAL RIGHT, EITHER LEGAL OR EQUITABLE, IS ESTABLISHED — BILLS OF PEACE AND BILLS *QUIA TIMET* QUIETING TITLE.

ANALYSIS.

§ 1393. Nature and object.

§ 1394. Bills of peace — Bills *quia timet* — Quieting title.

§ 1393. **Nature and Object.** — In all the remedies belonging to this class, some *general* right, which may be either legal or equitable, is declared and established.¹ The class includes suits to establish a will, suits to construe a will, and the bills of peace and bills *quia timet* for the purpose of quieting title, which belong to the original general jurisdiction of equity.²

§ 1394. **Bills of Peace — Quieting Title.** — The origin, grounds, growth, and extent of the jurisdiction of equity to entertain bills of peace have been fully discussed in the section which treats of the jurisdiction to prevent a multiplicity of suits.³ It was shown that there were two distinct kinds of bills of peace, — the one brought for the purpose of establishing a general right between a single party and numerous persons claiming distinct and individual interests, and the other for the purpose of quieting

¹ Some of the remedies of this class undoubtedly depend upon what the early chancellors called the “jurisdiction *quia timet*.” Since the conception of a *quia timet* jurisdiction is so broad, and runs through so many different branches of the remedial jurisprudence, I have not adopted it as a basis of classification. The object of suits to establish and to construe wills is plainly the establishment of a general right; and the same is no less true of those suits to quiet title, bills of peace, and the like, which belong to the original jurisdiction of equity.

² All of these remedies have been fully considered in the preceding parts of this work, and I shall only add here a few observations concerning bills of peace, etc.

For suits to establish a will, see *ante*, § 1158. For suits to construe a will, see *ante*, §§ 1155–1157; also see *Dill v. Wisner*, 88 N. Y. 153; *Delaney v. McCormack*, 88 N. Y. 174; *Bliven v. Seymour*, 88 N. Y. 469 (will of personal property). For suit quieting title, bills of peace, etc., see *ante*, vol. 1, §§ 243–275.

³ Vol. 1, p. 254, sec. iv.

a complainant's title to land against a single adverse claimant.¹ In the first class, the original jurisdiction to maintain "bills of peace" or "bills *quia timet*," properly so called, will only be exercised where the claims of the numerous individuals have some community of interest in the subject-matter, or arise from a common title; but the jurisdiction has been enlarged so as to entertain analogous suits, where the community of interest is in respect merely to the questions involved or to the kind of relief demanded.² In the second class, the suit can be maintained by a party in possession against a single defendant ineffectually seeking to establish a legal title by repeated actions of ejectment. It is here necessary that the title of the complainant should be established by at least one successful trial at law before equity will entertain jurisdiction.³

¹ Vol. 1, § 246.

² See the cases cited in vol. 1, §§ 273, 274, and the following additional cases on the last branch of the statement: *Thorpe v. Brumfitt*, L. R. 8 Ch. 650, 655, 656; *White v. Jameson*, L. R. 18 Eq. 303; *Duke of Buccleuch v. Cowan*, 5 Macph. (5 Ses. Cas. S., 3d series) 214; *Chipman v. Palmer*, 77 N. Y. 51, 56; 33 Am. Rep. 566; *Chenango Bridge Co. v. Lewis*, 63 Barb. 111; *Henshaw v. Clark*, 14 Cal. 460, 465; *Hillman v. Newington*, 57 Cal. 56, 64; *Blaisdell v. Stephens*, 14 Nev. 17, 23; 33 Am. Rep. 523; *Gaines v.*

Chew, 2 How. 619, 642; *Oliver v. Piatt*, 3 How. 333, 412; *Central Pac. R. R. v. Dyer*, 1 Saw. 641, 650; *Woodruff v. North Bloomfield etc. Co.*, 8 Saw. 628, 636; *Troy & B. R. R. v. Boston etc. R'y*, 86 N. Y. 107; *Town of Springport v. Teutonia Sav. Bank*, 75 N. Y. 397.

³ Vol. 1, §§ 253, 272; *Thompson v. Engle*, 4 N. J. Eq. 271; *Gunn v. Harrison*, 7 Ala. 585. This class is practically obsolete in many states, owing to the effect given to judgments, by statute, in the action of ejectment.

CHAPTER THIRD.

SUITS BY WHICH SOME PARTICULAR ESTATE, INTEREST, OR RIGHT, EITHER LEGAL OR EQUITABLE, IS ESTABLISHED—STATUTORY SUIT TO QUIET TITLE—SUIT TO REMOVE A CLOUD FROM TITLE.

ANALYSIS.

- § 1395. Nature and object.
- § 1396. Statutory suit to quiet title; legislation.
- § 1397. The same; essential features and requisities; possession; title.
- § 1398. Suit to remove a cloud from title; to prevent a cloud.
- § 1399. The same; when the jurisdiction is exercised; general doctrine.

§ 1395. **Nature and Object.**—In all the instances of this class, as distinguished from those of the preceding one, the direct object of the remedy is to declare and establish some particular estate, interest, or right, either legal or equitable, in the property which is the subject-matter.¹ The class as a whole embraces suits for the strict foreclosure of a mortgage or a pledge, suits for the redemption of a mortgage, suits for the redemption of a pledge,² statutory suits to quiet title, and suits to remove a cloud from title.

§ 1396. **Statutory Suit to Quiet Title—Legislation.**—The equity jurisdiction to quiet title, independent of statute, was only invoked by a plaintiff in possession, holding the legal title, when successive actions at law, all of which had failed, were brought against him by a single person out of possession, or when many persons

¹ Some of these remedies, also, have been said to depend upon the *quia timet* jurisdiction.

² These three remedies have already been considered: Strict foreclosure of a mortgage: *Ante*, § 1227; of a pledge: *ante*, § 1231. Redemption of a mortgage: *Ante*, §§ 1219, 1220; of a pledge: *ante*, § 1231. I shall in this chapter only discuss the statutory suit to quiet

title, and the suit to remove a cloud from title. The former of these suits has, in many of the states, become the most important and common of equitable remedies, and has even taken the place, to some extent, of the action of ejectment. The original equitable jurisdiction to quiet title has been greatly enlarged.

asserted equitable titles against a plaintiff in possession holding the legal or an equitable title. The action has been greatly extended by statute, and in many states is the ordinary mode of trying disputed titles.¹ The states

¹ *Arizona*: Code Civ. Proc., sec. 256; *California*: Code Civ. Proc., sec. 738; Practice Act, sec. 254; *Colorado*: Code Civ. Proc., sec. 237; *Dakota*: Rev. Codes 1877, p. 584, sec. 635; *Idaho*: Rev. Laws 1874-75, p. 146, sec. 275; *Illinois*: Hurd's Rev. Stats. 1880, p. 192, c. 22, sec. 50; *Indiana*: 2 Davis's Stats. 1876, p. 254, sec. 611; [Rev. Stats. 1884, sec. 1070;] *Iowa*: 1 Miller's Rev. Code 1880, p. 802, sec. 3273; *Kansas*: Dassler's Comp. Laws 1881, p. 683, sec. 594; *Kentucky*: 2 Stanton's Rev. Stats. 1867, c. 57, p. 102; *Michigan*: 2 Comp. Laws 1871, p. 1537, sec. 36; [Laws 1887, p. 337, No. 260;] *Minnesota*: Young's Stats. 1880, p. 814, c. 75, sec. 2; *Mississippi*: Rev. Code 1880, p. 507, sec. 1833; *Montana*: Rev. Stats. 1879, p. 110, sec. 354; *Nebraska*: Brown's Comp. Stats. 1881, p. 394, c. 73, sec. 57; *Nevada*: 1 Comp. Laws 1873, p. 372, sec. 1317; *New Jersey*: Rev. 1877, p. 1189; *New York*: 2 Bliss's Code Civ. Proc. 1880, p. 88, sec. 1633; *Ohio*: Code Civ. Proc., sec. 557; Rev. Stats. 1880, p. 1396, sec. 5779; *Oregon*: Gen. Laws 1874, p. 212, sec. 500; *Utah*: Comp. Laws 1876, p. 477, sec. 254; *Wisconsin*: Taylor's Rev. Stats. 1872, p. 1671, c. 141, sec. 29. See also *Georgia*: Code 1882, secs. 3232, 3233; and *Louisiana*: Voorhies's Rev. Code of Prac. 1875, p. 46, arts. 46, 49, 50, 52. The statutes of Massachusetts and Missouri contain provisions concerning preliminary actions which may be brought against holders of adverse claims, to show cause why such holders should not institute proceedings to have their claims determined: See Mass. Pub. Stats. 1882, p. 1026, c. 176; Mo. Rev. Stats. 1879, p. 608, sec. 3562. The action, if brought by a plaintiff in possession, or perhaps when both parties are out of possession, is held to be equitable in its nature: *Leggett v. Cole*, 1 McCrary, 515; *Balmear v. Otis*, 4 Dill. 558; *Brandt v. Wheaton*, 52 Cal. 430.

The following are decisions arising under these various acts:—

California: Present code: *Leet v. Rider*, 48 Cal. 623; *Pierce v. Felter*,

53 Cal. 18; *Stoddart v. Burge*, 53 Cal. 394; *Brandt v. Wheaton*, 52 Cal. 430; *San Francisco v. Ellis*, 54 Cal. 72; *Brewer v. Houston*, 58 Cal. 345; *Burton v. Le Roy*, 5 Saw. 510; [*People v. Center*, 66 Cal. 551; *Axtell v. Gerlach*, 67 Cal. 483; *Louvall v. Gridley*, 70 Cal. 507; *San Francisco v. Holladay*, 76 Cal. 18; *McLennan v. McDonnell*, 78 Cal. 272; *Withers v. Jacks*, 79 Cal. 297; 12 Am. St. Rep. 143; *Castro v. Barry*, 79 Cal. 443; *Peregoy v. Sellick*, 79 Cal. 568; *Harrigan v. Mowry*, 84 Cal. 456; *Kittle v. Bellegarde*, 86 Cal. 556; *Donahue v. Meister*, 88 Cal. 121; 22 Am. St. Rep. 283.] Practice Act: *Merced Min. Co. v. Fremont*, 7 Cal. 317; 68 Am. Dec. 262; *Smith v. Brannan*, 13 Cal. 107; *Curtis v. Sutter*, 15 Cal. 259; *Van Winkle v. Hinckle*, 21 Cal. 342; *Ricov. Spence*, 21 Cal. 504; *Head v. Fordyce*, 17 Cal. 149; *Lyle v. Rollins*, 25 Cal. 437; *Horn v. Jones*, 28 Cal. 194; *Ferris v. Irving*, 28 Cal. 645; *Reed v. Calderwood*, 32 Cal. 109; *Pralus v. Pacific etc. Min. Co.*, 35 Cal. 30; *Pralus v. Jefferson etc. M. Co.*, 34 Cal. 558; *Brooks v. Calderwood*, 34 Cal. 563; 45 Cal. 519; *Ross v. Heintzen*, 36 Cal. 313; *Nevada Co. etc. Canal Co. v. Kidd*, 37 Cal. 282; *Sepulveda v. Sepulveda*, 39 Cal. 13; *Coleman v. San Rafael etc. Co.*, 49 Cal. 517.

Illinois: *Emery v. Cochran*, 82 Ill. 65; *Hardin v. Jones*, 86 Ill. 313; *Gage v. Abbott*, 99 Ill. 366; *Whitney v. Stevens*, 97 Ill. 482; *Oakley v. Hurlbut*, 100 Ill. 204; *Barnard v. Hoyt*, 63 Ill. 341; *Wing v. Sherrer*, 77 Ill. 200; [*Gould v. Sternburg*, 105 Ill. 488; *Ritchie v. Pease*, 114 Ill. 353; *Gage v. Williams*, 119 Ill. 563; *Parker v. Shannon*, 121 Ill. 452; *Wetherell v. Eberle*, 123 Ill. 666; 5 Am. St. Rep. 574; *Johnson v. Huling*, 127 Ill. 14; *Gage v. Hampton*, 127 Ill. 87; *Lundy v. Lundy*, 131 Ill. 138.]

Indiana: *Cooper v. Jackson*, 71 Ind. 244; *Green v. Glynn*, 71 Ind. 336; *Ross v. Nees*, 61 Ind. 484; [*Reynolds v. Crawfordville Bank*, 112 U. S. 405; *Barnes v. Union School Tp.*, 91 Ind. 301; *Farrar v. Clark*, 97 Ind. 447;

adopting such statutes may be separated into two classes, the first and most numerous class requiring the plaintiff

Trittip v. Morgan, 99 Ind. 269; *Grisom v. Moore*, 106 Ind. 296; 55 Am. Rep. 742; *Otis v. Gregory*, 111 Ind. 504; *Johnson v. Murray*, 112 Ind. 154; 2 Am. St. Rep. 174; *Indiana etc. R. R. Co. v. Allen*, 113 Ind. 581.]

Iowa: *Fejervary v. Langer*, 9 Iowa, 159; *Lavery v. Sexton*, 41 Iowa, 435; *Miller v. Davison*, 31 Iowa, 435; *Lewis v. Soule*, 52 Iowa, 11; *Paton v. Lancaster*, 38 Iowa, 494; *Balmear v. Otis*, 4 Dill. 558; [*Lees v. Wetmore*, 58 Iowa, 170; *Whitehead v. Shattuck*, 138 U. S. 146.]

Kansas: *Eaton v. Giles*, 5 Kan. 24; *Brenner v. Bigelow*, 8 Kan. 496; *O'Brien v. Creitz*, 10 Kan. 202; *Wood v. Missouri etc. R'y*, 11 Kan. 325; *Giles v. Ortman*, 11 Kan. 59; *Douglass v. Nuzum*, 16 Kan. 515; *Entreken v. Howard*, 16 Kan. 551; *Cartwright v. McFadden*, 24 Kan. 662; *Douglass v. Bishop*, 24 Kan. 749; *Giltinan v. Lemert*, 13 Kan. 476; *Pierce v. Thompson*, 26 Kan. 714; [*Northrop v. Andrews*, 39 Kan. 567.]

Kentucky: *Dudley v. Trustees of Frankfort*, 12 B. Mon. 610; *Armitage v. Wickliffe*, 12 B. Mon. 488, 494; *Taylor v. Embry*, 16 B. Mon. 340; *Cates v. Loftus's Heirs*, 4 T. B. Mon. 439; *Beard v. Smith*, 6 T. B. Mon. 430, 505; *Underwood v. Crutcher*, 7 J. J. Marsh. 529; *Hiatt's Heirs v. Callo-way's Heirs*, 7 B. Mon. 178; *Harris v. Smith*, 2 Dana, 10; *Landrum v. Farmer*, 7 Bush, 46; *Fraleigh v. Peters*, 12 Bush, 469; [*Scott v. Means*, 80 Ky. 460.]

Michigan: *Stockton v. Williams*, 1 Doug. (Mich.) 546; *Hall v. Kellogg*, 16 Mich. 135; *Rowland v. Doty*, Harr. (Mich.) 3; *Blanchard v. Tyler*, 12 Mich. 339; 86 Am. Dec. 57; *Stetson v. Cook*, 39 Mich. 750; *Haddon v. Hemingway*, 39 Mich. 615; *Hammon-tree v. Lott*, 40 Mich. 190; *Barron v. Robbins*, 22 Mich. 35; *King v. Carpenter*, 37 Mich. 363; *Moran v. Palmer*, 13 Mich. 367; *Ormsby v. Barr*, 22 Mich. 80; *Jenkins v. Bacon*, 30 Mich. 154; *Meth. Church of New-ark v. Clark*, 41 Mich. 730; [*Kilgan-non v. Jenkinson*, 51 Mich. 240; *Alterauge v. Christiansen*, 48 Mich. 60. Under Stat. 1887: *Grand Rapids etc. R. R. Co. v. Sparrow*, 36 Fed. Rep.

210; *Hatch v. Village of St. Joseph*, 68 Mich. 220.]

Minnesota: *Steele v. Fish*, 2 Minn. 153; *Meighen v. Strong*, 6 Minn. 177; 80 Am. Dec. 441; *Bidwell v. Webb*, 10 Minn. 59; 88 Am. Dec. 56; *Wilder v. City of St. Paul*, 12 Minn. 192; *Murphy v. Hinds*, 15 Minn. 182; *Byrne v. Hinds*, 16 Minn. 521; *Conk-lin v. Hinds*, 16 Minn. 457; *Leggett v. Cole*, 1 McCrary, 515; [*Knight v. Alexander*, 38 Minn. 384; 8 Am. St. Rep. 675.]

Mississippi: *Boyd v. Thornton*, 13 Smedes & M. 338; *Toulmin v. Heidel-berg*, 32 Miss. 268; *Kerr v. Freeman*, 33 Miss. 292; *Ezelle v. Parker*, 41 Miss. 520; *Huntington v. Allen*, 44 Miss. 654; *Glazier v. Bailey*, 47 Miss. 395; *Carlisle v. Tindall*, 49 Miss. 229; *Handy v. Noonan*, 51 Miss. 166; *Griffin v. Harrison*, 52 Miss. 824; *Shivers v. Simmons*, 54 Miss. 520; 28 Am. Rep. 372; *Wofford v. Bailey*, 57 Miss. 239; [*Paxton v. Val-ley Land Co.*, 67 Miss. 96.]

[*Montana*: *Northern Pac. R. R. Co. v. Cannon*, 46 Fed. Rep. 224.]

Nebraska: *State v. Sioux City etc. R. R.*, 7 Neb. 357; *Harral v. Gray*, 10 Neb. 186; [*Frost v. Spitley*, 121 U. S. 552; *Holland v. Challen*, 110 U. S. 19; *McDonald v. Early*, 15 Neb. 63; *Brewer v. Merrick Co.*, 15 Neb. 180.]

Nevada: *Low v. Staples*, 2 Nev. 209; *Scorpion S. M. Co. v. Marsano*, 10 Nev. 370; *Lake Bigler Road Co. v. Bedford*, 3 Nev. 399; *Central Pac. R. R. v. Dyer*, 1 Saw. 641.

New Jersey: *Powell v. Mayo*, 24 N. J. Eq. 178; *Holmes v. Chester*, 26 N. J. Eq. 79; *Bogert v. City of Eliza-beth*, 27 N. J. Eq. 568; *Jersey City v. Lembeck*, 31 N. J. Eq. 255; *Luding-ton v. City of Elizabeth*, 32 N. J. Eq. 159; 34 N. J. Eq. 357; *Lembeck v. Jersey City*, 30 N. J. Eq. 554; *Ray-mond v. Post*, 25 N. J. Eq. 447; [*American D. & I. Co. v. Trustees*, 37 N. J. Eq. 268; *Sheppard v. Nixon*, 43 N. J. Eq. 632.]

New York: *Onderdonk v. Mott*, 34 Barb. 106; *Haynes v. Onderdonk*, 5 Thomp. & C. 176; *Burnham v. Onder-donk*, 41 N. Y. 425; *Fisher v. Hep-burn*, 48 N. Y. 41; *Austin v. Good-rich*, 49 N. Y. 236; *Barnard v. Simms*, 42 Barb. 304; *Donahue v. O'Connor*, 13

to be in possession, and the second allowing the action to be brought by a plaintiff either in or out of possession.¹ In almost every instance the statutes, either by express terms or through broad and general language, allow the action to be maintained by persons having equitable titles; in other words, a plaintiff need not have a legal title.²

Jones & S. 278; *Schroeder v. Gurney*, 10 Hun, 413; *Ford v. Belmont*, 69 N. Y. 567.

Ohio: *Harvey v. Jones*, 1 Disn. 65; *Douglass v. Scott*, 5 Ohio, 194; *Clark v. Hubbard*, 8 Ohio, 382; *Thomas v. White*, 2 Ohio St. 540; *Ellithorpe v. Buck*, 17 Ohio St. 72; *Collins v. Collins*, 19 Ohio St. 463; *Rhea v. Dick*, 34 Ohio St. 420; *Bailey v. Hughes*, 35 Ohio St. 597.

Oregon: *Tichenor v. Knapp*, 6 Or. 205; *Thompson v. Woolf*, 8 Or. 454; *King v. French*, 2 Saw. 441; *Stark v. Starrs*, 6 Wall. 402.

Utah: *Goldberg v. Taylor*, 2 Utah, 486.

Wisconsin: *Pier v. Fond du Lac*, 38 Wis. 470; *Maxon v. Ayers*, 28 Wis. 612; *Shaffer v. Whelpley*, 37 Wis. 334; *Page v. Kennan*, 38 Wis. 320; *Wals v. Grosvenor*, 31 Wis. 681; *Jones v. Collins*, 16 Wis. 594; *Gamble v. Loop*, 14 Wis. 465; *Dean v. Madison*, 9 Wis. 402; *[Ellis v. Northern Pac. R. R. Co.]*, 77 Wis. 114.]

Georgia: *South Carolina R. R. v. Steiner*, 44 Ga. 546; *Jones v. Georgia R. R.*, 62 Ga. 718; *Dart v. Orme*, 41 Ga. 376; *Wynne v. Lumpkin*, 35 Ga. 208.

Louisiana: *Dooley v. Gibson*, 32 La. Ann. 192; *Lange v. Baranco*, 32 La. Ann. 697; *White v. Sheriff*, 32 La. Ann. 130; *Dahlgreen v. Duncan*, 26 La. Ann. 363; *Deuchatell v. Robinson*, 24 La. Ann. 176; *Dickson v. Marks*, 10 La. Ann. 518; *Searles v. Costillo*, 12 La. Ann. 203; *Millard v. Richard*, 13 La. Ann. 572.

Massachusetts: *Hill v. Andrews*, 12 Cush. 185; *Dewey v. Bulkley*, 1 Gray, 416; *Macomber v. Jaffray*, 4 Gray, 82; *Munroe v. Ward*, 4 Allen, 150; *Tompkins v. Wyman*, 116 Mass. 558; *India Wharf v. Central Wharf*, 117 Mass. 504; *Tisdale v. Brabrook*, 102 Mass. 374; *Boston Mfg. Co. v. Burgin*, 114 Mass. 340; *Bowditch v. Gardner*, 113 Mass. 315.

Missouri: *Von Phul v. Penn*, 31 Mo.

333; *Rutherford v. Ullman*, 42 Mo. 216; *Deware v. Wyatt*, 50 Mo. 236; *Jordon v. Stevens*, 55 Mo. 361; *Webb v. Donaldson*, 60 Mo. 394; *Babe v. Phelps*, 65 Mo. 27; *Grant v. King*, 31 Mo. 312; *Campbell v. Allen*, 61 Mo. 581; *Bredell v. Alexander*, 8 Mo. App. 110.

¹ The states and territories comprising the first class are Arizona, California (under the former Practice Act), Colorado, Kansas, Kentucky, Illinois (except where the land is unimproved and unoccupied), Michigan [except that by Laws of 1887, No. 260, the suit may also be brought when both plaintiff and defendant are out of possession], Minnesota (except in the case of vacant and unoccupied land), Montana, Nevada, New Jersey, New York, Ohio, Oregon, Utah, and Wisconsin. The complaint must allege possession, the allegation is material, and if traversed, must be proved, or the plaintiff's case will fail: *Ferris v. Irving*, 28 Cal. 645, 647; *Pralus v. Jefferson*, etc. Min. Co., 34 Cal. 558; *Sepulveda v. Sepulveda*, 39 Cal. 13, 18; *Meighen v. Strong*, 6 Minn. 177, 80 Am. Dec. 441; *Douglass v. Nuzum*, 16 Kan. 515; *Shaffer v. Whelpley*, 37 Wis. 334. In regard to the nature of the possession requisite to maintain the action, there is some conflict. It has been held on the one side that possession must be lawful, — must be accompanied by a claim of right, legal or equitable: *Stark v. Starrs*, 6 Wall. 402; *King v. French*, 2 Saw. 441; *Tichenor v. Knapp*, 6 Or. 205; and on the other, that it is immaterial how possession was obtained, — by collusion, fraud, or otherwise: *Scorpion S. M. Co. v. Marsano*, 10 Nev. 370; *Calderwood v. Brooks*, 45 Cal. 519. The states and territories included in the second class are California, Dakota, Idaho, Indiana, Iowa, Mississippi, and Nebraska.

² The excepted instances are Kentucky, Wisconsin, and formerly Ohio: See Chase's Ohio Stats. 687, 1278,

§ 1397. **Essential Features and Requisites.**—The essential features of the action brought in states of the first class, wherein it differs from the ordinary equitable suit to quiet title, are that the plaintiff may in all cases take the initiative, and need not wait for proceedings to be instituted against him; the statute is an enabling act; and the action may be brought against one or more claimants without regard to the interest or title—legal or equitable—which he or the plaintiff may hold.¹ In addition to the foregoing differences, possession is not required in states of the second class; the action may therefore be brought here in cases where a party at common law

1697. In these states a plaintiff is required to have a legal title. [Also, it seems, in Nebraska: *Frost v. Spitley*, 121 U. S. 552.]

¹ See the various statutes; *Curtis v. Sutter*, 15 Cal. 259, 263; *Head v. Fordyce*, 17 Cal. 149; *Central Pac. R. R. v. Dyer*, 1 Saw. 641, 648; *Stark v. Starrs*, 6 Wall. 402, 410; *Smith v. Brannan*, 13 Cal. 107, 114; *Merced Min. Co. v. Fremont*, 7 Cal. 317, 319; 68 Am. Dec. 262; *Giltinan v. Lemert*, 13 Kan. 476; *Meighen v. Strong*, 6 Minn. 177, 179; [*Alterauge v. Christiansen*, 48 Mich. 60.] See also *Pierce v. Felter*, 53 Cal. 18; *Stoddard v. Burge*, 53 Cal. 394,—under a statute of the second class. In New York, however, a plaintiff must have been in possession for three years, claiming an estate in fee, for life, or for a term of years not less than ten. In general, some interest is necessary: See note preceding last. A possessory title is held sufficient to maintain the action to quiet title to a mining claim located on public lands of the United States: *Pralus v. Pacific etc. Min. Co.*, 35 Cal. 30; *Merced Min. Co. v. Fremont*, 7 Cal. 317; 68 Am. Dec. 262. [In *Knight v. Alexander*, 38 Minn. 384, 8 Am. St. Rep. 675, it is held that one in possession may maintain the action without other proof of his interest.] A mere trespasser on government land cannot maintain the action: *Wood v. Missouri etc. R'y*, 11 Kan. 323. A question has arisen in states of this class, which cannot very well arise in those of the second class, as to the

effect of the statutes on the remedies of a plaintiff out of possession. It has been contended that the statutes have deprived such a plaintiff of any equitable remedy which he might otherwise have, leaving as his only resort ejectment, or a legal action to recover possession. The answer, on principle, is plain: equity is not deprived of its jurisdiction except by express language or necessary implication; none of these statutes contain such prohibitory language, nor can they be so construed as to deprive equity of jurisdiction to grant its ordinary remedies. Again, in those states which have adopted the reformed procedure, all remedies, legal and equitable, are unaffected; *Pomeroy on Remedies*, sec. 69. While it is evident that a party out of possession holding a legal title must resort to ejectment, as before, to recover possession: *Curtis v. Sutter*, 15 Cal. 259, 264; *Van Winkle v. Hinckle*, 21 Cal. 342; *King v. Carpenter*, 37 Mich. 363; *Moran v. Palmer*, 13 Mich. 367; *Methodist Church of Newark v. Clark*, 41 Mich. 730; it is equally evident that the statutes do not prevent a party out of possession from applying for equitable relief,—as, for example, to have a cloud removed or prevent a cloud from being cast on his title: *King v. Carpenter*, 37 Mich. 363; *Ormsby v. Barr*, 22 Mich. 80; *Low v. Staples*, 2 Nev. 209; *Pier v. Fond du Lac*, 38 Wis. 470; *Jones v. Smith*, 22 Mich. 360; see also *Harral v. Gray*, 10 Neb. 186, 188.

would be left to his remedy by ejectment.¹ Several of the statutes in express terms allow the action to be brought to remove clouds from title;² others are sufficiently general to include this as well as other adverse claims.³

§ 1398. **Suit to Remove a Cloud from Title.**—The jurisdiction of courts of equity to remove clouds from title is well settled,⁴ the relief being granted on the principle *quia timet*,—that is, that the deed or other instrument or proceeding constituting the cloud may be used to injuriously or vexatiously embarrass or affect a plaintiff's title.⁵

§ 1399. **When the Jurisdiction is Exercised — General Doctrine.**—Whether or not the jurisdiction will be ex-

¹ See *Lewis v. Soule*, 52 Iowa, 11, 13.

² See the statutes of Illinois, Mississippi, and New Jersey; also that of Georgia.

³ *Head v. Fordyce*, 17 Cal. 149; *Maxon v. Ayers*, 28 Wis. 612; *Dean v. Madison*, 9 Wis. 402; *Lewis v. Soule*, 52 Iowa, 11, 13.

As to the effect of the judgment in this statutory action, see *Green v. Glynn*, 71 Ind. 336; *Reed v. Calderwood*, 32 Cal. 109; [*People v. Center*, 66 Cal. 551; *Kittle v. Bellegarde*, 86 Cal. 556; *Indiana etc. R. R. Co. v. Allen*, 113 Ind. 581.] As to the proper or necessary parties in all such suits to quiet title, see *Pomeroy on Remedies*, secs. 369-372; *Flanders v. McClanahan*, 24 Iowa, 486; *Thomas v. Kennedy*, 24 Iowa, 397; 95 Am. Dec. 740; *Beckwith v. Dargets*, 18 Iowa, 303; *Pierce v. Faunce*, 47 Me. 507; *Newman v. Home Ins. Co.*, 20 Minn. 422; *Johnson v. Robinson*, 20 Minn. 170; *Durham v. Bischof*, 47 Ind. 211; *Haley v. Bagley*, 37 Mo. 363; *Mills v. Buttrick*, 4 Col. 123; *Bush v. Hicks*, 60 N. Y. 298; *Fisher v. Hepburn*, 48 N. Y. 41, 55; [*Louvall v. Gridley*, 70 Cal. 507.]

⁴ *Hayward v. Dimsdale*, 17 Ves. 111; *Mayor of Colchester v. Lowten*, 1 Ves. & B. 226, 244; *Pettit v. Shepherd*, 5 Paige, 493, 501; *Apthorp v. Comstock*, 2 Paige, 482; *Peirsoll v. Elliott*, 6 Pet. 95, 98; [*Holland v. Challen*, 110 U. S. 19, 24.] Formerly there seems to have been some doubt as to

the jurisdiction. Cancellation is the ordinary remedy in removing clouds. It is equally well established that equity has jurisdiction to prevent, by means of injunctions, clouds from being cast on titles: *Pettit v. Shepherd*, 5 Paige, 493; 28 Am. Dec. 437; *Oakley v. Trustees etc.*, 6 Paige, 262; *Shattuck v. Carson*, 2 Cal. 588; *Norton v. Beaver*, 5 Ohio, 178; *Bank of U. S. v. Schultz*, 2 Ohio, 471; *Groves v. Weber*, 72 Ill. 606; *O'Hare v. Downing*, 130 Mass. 16; *Mann v. City of Utica*, 44 How. Pr. 334; *Sanders v. Village of Yonkers*, 63 N. Y. 489; *Merriman v. Polk*, 5 Heisk. 717. See, in this connection, *Drake v. Jones*, 27 Mo. 428; [*Union Pac. R'y Co. v. Cheyenne*, 113 U. S. 516; *De Witt v. Van Schoyk*, 110 N. Y. 7; 6 Am. St. Rep. 342; *Bishop v. Moorman*, 98 Ind. 1; 49 Am. Rep. 731; *Gardner v. Terry*, 99 Mo. 523; *Sperry v. City of Albina*, 17 Or. 481.] The danger, however, in such cases must be imminent, and not merely speculative or potential: *Sanders v. Village of Yonkers*, *supra*. Cases for preventing and removing clouds from title depend generally upon the same principles, and will be discussed together. For statutory proceedings to remove clouds from title, see § 1397.

⁵ 1 Fonblanque's Equity, b. 1, c. 1, sec. 8, note *g*. See also *Shell v. Martin*, 19 Ark. 139, 141; *Hager v. Shindler*, 29 Cal. 47, 55; *Eckman v. Eckman*, 55 Pa. St. 269, 273.

exercised depends upon the fact that the estate or interest to be protected is equitable in its nature, or that the remedies at law are inadequate where the estate or interest is legal, — a party being left to his legal remedy where his estate or interest is legal in its nature, and full and complete justice can thereby be done.¹ While a court of

¹ *De Witt v. Hays*, 2 Cal. 463; 56 Am. Dec. 352; *Hager v. Shindler*, 29 Cal. 47; *Gage v. Rohrbach*, 56 Ill. 262, 266; *Gage v. Billings*, 56 Ill. 268; *Budd v. Long*, 13 Fla. 288; *Lockwood v. City of St. Louis*, 24 Mo. 20; *Hall v. Whiston*, 5 Allen, 126; *Hinckley v. Greany*, 118 Mass. 595; *Daniel v. Stewart*, 55 Ala. 278; *Redmond v. Packenham*, 66 Ill. 434; *Martin v. Graves*, 5 Allen, 601; *Sullivan v. Finnegan*, 101 Mass. 447; *Plant v. Barclay*, 56 Ala. 561; *Jones v. De Graffenreid*, 60 Ala. 145; *Grigg v. Swindal*, 67 Ala. 187; *Miller v. Neiman*, 27 Ark. 233; *Crane v. Randolph*, 30 Ark. 579; *Munson v. Munson*, 28 Conn. 582; 73 Am. Dec. 693; *Commonwealth v. Smith*, 10 Allen, 448; 87 Am. Dec. 672; *Kennedy v. Northup*, 15 Ill. 148; *Moran v. Palmer*, 13 Mich. 367; *King v. Carpenter*, 37 Mich. 363; *Branch v. Mitchell*, 24 Ark. 431.

As to whether possession by a plaintiff is necessary before he can resort to equity to remove a cloud, there appears to be some conflict of opinion, arising from loose and careless statements of judges, and an overlooking of the principles of equity in regard to the exercise of its jurisdiction. When the estate or interest to be protected is equitable, the jurisdiction should be exercised whether the plaintiff is in or out of possession, for under these circumstances legal remedies are not possible; but when the estate or interest is legal in its nature, the exercise of the jurisdiction depends upon the adequacy of legal remedies. Thus, for example, a plaintiff out of possession, holding the legal title, will be left to his remedy by ejectment, under ordinary circumstances: *Barton v. Gleason*, 56 Ill. 25; *Polk v. Pendleton*, 31 Md. 118; *Branch v. Mitchell*, 24 Ark. 431, 439; *Moran v. Palmer*, 13 Mich. 367, 370; *Crane v. Randolph*, 30 Ark. 579; *Munson v. Munson*, 28 Conn. 582; *King v. Carpenter*, 37 Mich. 363; *Lawrence v. Zimpleman*, 37 Ark. 643; *Odle v. Odle*, 73 Mo. 289; [U. S. v. Wilson, 118 U. S. 86; *Northern Pac. R. R. Co. v. Cannon*, 46 Fed. Rep. 224; *Morris v. Townshend*, 102 N. Y. 387; *Weaver v. Arnold*, 15 R. I. 53; *Sheppard v. Nixon*, 43 N. J. Eq. 632; *Peoples v. Burns*, 77 Ala. 290; *Teague v. Martin*, 87 Ala. 500; 13 Am. St. Rep. 63; *Mathews v. Marks*, 44 Ark. 437; *Graves v. Ewart*, 99 Mo. 18; *Livingston v. Hall*, 73 Md. 386.] But where he is in possession, and thus unable to obtain any adequate legal relief, he may resort to equity: *Gage v. Rohrbach*, 56 Ill. 262, 266; *Gage v. Billings*, 56 Ill. 268; *Jones v. De Graffenreid*, 60 Ala. 145, 151; *Hinckley v. Greany*, 118 Mass. 595; *Sullivan v. Finnegan*, 101 Mass. 447; *Clouston v. Shearer*, 99 Mass. 209; *Branch v. Mitchell*, 24 Ark. 431, 439; [Allen v. Hanks, 136 U. S. 311; *Dull's Appeal*, 113 Pa. St. 510; *Loomis v. Roberts*, 57 Mich. 284.] Where, on the other hand, a party out of possession has an equitable title, or where he holds the legal title under circumstances that the law cannot furnish him full and complete relief, his resort to equity to have a cloud removed ought not to be questioned: *Redmond v. Packenham*, 66 Ill. 434; *Plant v. Barclay*, 56 Ala. 561; *Thompson v. Lynch*, 29 Cal. 189; *Hager v. Shindler*, 29 Cal. 47; *Kennedy v. Northup*, 15 Ill. 148, 152; *Branch v. Mitchell*, 24 Ark. 431, 439; *King v. Carpenter*, 37 Mich. 363; *Ormsby v. Barr*, 22 Mich. 80, 84; *Low v. Staples*, 2 Nev. 209, 212; *Pier v. Fond du Lac*, 38 Wis. 470; *Lawrence v. Zimpleman*, 37 Ark. 643, 645; *Booth v. Wiley*, 102 Ill. 84, 114; [Stewart v. Meyer, 54 Md. 454; *Shipman v. Furniss*, 69 Ala. 555; 44 Am. Rep. 528; *Woodstock Iron Co. v. Fullenwider*, 87 Ala. 584; 13 Am. St. Rep. 73; *Haworth v. Taylor*, 108 Ill. 275; *Redin v. Branhan*, 43 Minn. 283; *Armstrong v. Connor*, 86 Ala. 350; *Mason v. Black*, 87 Mo.

equity will set aside a deed, agreement, or proceeding affecting real estate, where extrinsic evidence is necessary to show its invalidity, because such instrument or proceeding may be used for annoying and injurious purposes at a time when the evidence to contest or resist it may not be as effectual as if used at once,¹ still, if the defect appears upon its face, and a resort to extrinsic evidence is unnecessary, the reason for equitable interference does not exist, for it cannot be said that any cloud whatever is cast upon the title.² Cases showing various conditions

329.] While it cannot be said that the cases are uniform on the above propositions, still it is believed that the rule stated in the text and the above explanations are founded on principle and are sufficient to reconcile a vast majority of the conflicting, or apparently conflicting, judicial opinions and *dicta* on this question. In some of the cases the rule is so broadly stated as to require a plaintiff, seeking to have a cloud removed, under all circumstances to be in possession: *Orton v. Smith*, 18 How. 263; *Daniel v. Stewart*, 55 Ala. 278; *Arnett v. Bailey*, 60 Ala. 435; *Tyson v. Brown*, 64 Ala. 244; *Baines v. Barnes*, 64 Ala. 375; *Smith's Ex'r v. Cockrell*, 66 Ala. 64; *Miller v. Neiman*, 27 Ark. 233; *Keane v. Kyne*, 66 Mo. 216; *Haythorn v. Margerem*, 7 N. J. Eq. 324; *Busbee v. Lewis*, 85 N. C. 332; *Herrington v. Williams*, 31 Tex. 448; *Clark v. Covenant etc. Ins. Co.*, 52 Mo. 272; [*Frost v. Spitley*, 121 U. S. 552; *Harland v. B. & M. T. Co.*, 32 Fed. Rep. 305;] while, on the other hand, it is as generally stated that possession is never essential: *Almony v. Hicks*, 3 Head, 39; *Hager v. Shindler*, 29 Cal. 47; *Thompson v. Lynch*, 29 Cal. 189; *Bunch v. Gallagher*, 5 Blatchf. 481; *Jones v. Smith*, 22 Mich. 360. Both of these extreme views are open to criticism, and the cases should always be considered with reference to the facts actually before the court.

¹ *Crooke v. Andrews*, 40 N. Y. 547; *Newell v. Wheeler*, 43 N. Y. 486; *Ward v. Dewey*, 16 N. Y. 519; *Radcliff v. Rowley*, 2 Barb. Ch. 23; *Longley v. City of Hudson*, 4 Thomp. & C. 353; *Congregation Shaarai Tephila v. Mayor etc.*, 53 How. Pr. 213; *Daniel*

v. Stewart, 55 Ala. 278; *Lockett v. Hurt*, 57 Ala. 198; *Lick v. Ray*, 43 Cal. 83; *Alden v. Trubee*, 44 Conn. 455; *Brooks v. Kearns*, 86 Ill. 547; *Clark v. Covenant etc. Ins. Co.*, 52 Mo. 272; *Johnson v. Cooper*, 2 Yerg. 524; 24 Am. Dec. 502; *Almony v. Hicks*, 3 Head, 39; *Bunce v. Gallagher*, 5 Blatchf. 481; *Smith v. Fellows*, 9 Jones & S. 36; *Barton v. Drake*, 21 Minn. 299. [Also *Gage v. Kaufman*, 133 U. S. 471; *Cowan v. Sapp*, 74 Ala. 44; *Hare v. Carnall*, 39 Ark. 196; *Tibbetts v. Fore*, 70 Cal. 242.] A case for the interposition of equity is made the stronger by the fact that parol testimony is essential to show the invalidity: See the preceding cases. In *Waterbury Sav. Bank v. Lawler*, 46 Conn. 243, 246, it was held that relief would not be given where the rebutting evidence was a matter of record, and easily obtained. See also *Haines's Appeal*, 73 Pa. St. 169.

² *Simpson v. Lord Howden*, 3 Mylne & C. 97, 102, 103, 108, and cases cited; *Cox v. Clift*, 2 N. Y. 118; *Van Doren v. Mayor etc.*, 9 Paige, 388; *Heywood v. City of Buffalo*, 14 N. Y. 534; *Overing v. Foote*, 43 N. Y. 290; *Marsh v. City of Brooklyn*, 59 N. Y. 280; *Levy v. Hart*, 54 Barb. 248; *Tilden v. Mayor etc.*, 56 Barb. 340; *Mulligan v. Baring*, 3 Daly, 75; *Howell v. City of Buffalo*, 2 Abb. App. 412; *Farnham v. Campbell*, 34 N. Y. 480; *Dederer v. Voorhies*, 81 N. Y. 153; *Stuart v. Palmer*, 74 N. Y. 183; 30 Am. Rep. 289; *Townsend v. Mayor etc.*, 77 N. Y. 542; *Wells v. City of Buffalo*, 80 N. Y. 253; *Peirsoll v. Elliott*, 6 Pet. 95; *Posey v. Conaway*, 10 Ala. 811; *Cohen v. Sharp*, 44 Cal. 29; *Head v. James*, 13 Wis. 641; *Shepardson v. Supervisors*, 23

of facts in instruments creating clouds, and when jurisdiction will be exercised, are given in the foot-note. In the absence of statutes giving a *prima facie* validity to deeds or other proceedings, the following doctrine seems to be sustained by the great majority of the American decisions: Where the instrument or proceeding constituting the alleged cloud is absolutely void on its face, so that no extrinsic evidence is necessary to show its invalidity, and where the instrument or proceeding is not thus void on its face, but the party claiming under it, in order to enforce it, *must necessarily* offer evidence which will *inevitably* show its invalidity and destroy its efficacy,—in each of these cases the court will not exercise its jurisdiction either to restrain or to remove a cloud, for the assumed reason that there is no cloud.¹ While this doc-

Wis. 593; Briggs v. Johnson, 71 Me. 235; Busbee v. Macy, 85 N. C. 329; Minturn v. Smith, 3 Saw. 142; Curtis v. City of East Saginaw, 35 Mich. 508. See the rule as stated in Merchants' Bank v. Evans, 51 Mo. 335, 345. [See also Phelps v. Harris, 101 U. S. 375; Clark v. Davenport, 95 N. Y. 477; Moores v. Townshend, 102 N. Y. 387; Pooley v. Buffalo, 124 N. Y. 206; Browning v. Lavender, 104 N. C. 73; Benner v. Kendall, 21 Fla. 584; Curry v. Peebles, 83 Ala. 225; Cornish v. Frees, 74 Wis. 490; Gilman v. Van Brunt, 29 Minn. 271.]

In many states, deeds, certificates, and other instruments given on sales for taxes are made *prima facie* evidence by statute of the regularity of proceedings connected with the assessments and sales, and it is well settled that courts of equity will set aside such instruments for defects, although such defects are apparent on the faces of the instruments; Scott v. Onderdonk, 14 N. Y. 9; 67 Am. Dec. 106; Huntington v. Cent. Pac. R. R., 2 Saw. 503; Palmer v. Rich, 12 Mich. 414; Marquette etc. R. R. v. City of Marquette, 35 Mich. 504; Weller v. City of St. Paul, 5 Minn. 95; Allen v. City of Buffalo, 39 N. Y. 386; Hatch v. City of Buffalo, 38 N. Y. 276; Crooke v. Andrews, 40 N. Y. 547; Lewis v. City of Buffalo, 29 How. Pr.

335; Johnson v. Stevens, 13 How. Pr. 132; Mann v. City of Utica, 44 How. Pr. 334; Astor v. Mayor etc., 5 Jones & S. 539; Lennon v. Mayor etc., 5 Daly, 347; Nichols v. Voorhis, 9 Hun, 171; Masterson v. Hoyt, 55 Barb. 520; [Rumsey v. City of Buffalo, 97 N. Y. 114.]

¹ *Deeds*: Lyon v. Hunt, 11 Ala. 295; 46 Am. Dec. 216; Hunt v. Acre, 23 Ala. 580; Barclay v. Henderson, 44 Ala. 269; Daniel v. Stewart, 55 Ala. 278; Lockett v. Hurt, 57 Ala. 198; Posey v. Conaway, 10 Ala. 811; Florence v. Paschal, 50 Ala. 28; Plant v. Barclay, 56 Ala. 561; Jones v. De Graffenreid, 60 Ala. 145; Arnett v. Bailey, 60 Ala. 435; Tyson v. Brown, 64 Ala. 244; Baines v. Barnes, 64 Ala. 375; Smith's Ex'r v. Cockrell, 66 Ala. 64; Grigg v. Swindal, 67 Ala. 187; Shell v. Martin, 19 Ark. 139; Walker v. Peay, 22 Ark. 103; Miller v. Neiman, 27 Ark. 233; Crane v. Randolph, 30 Ark. 579; Riley v. Pehl, 23 Cal. 70; Hager v. Shindler, 29 Cal. 47; Thompson v. Lynch, 29 Cal. 189; Lick v. Ray, 43 Cal. 83; Cohen v. Sharp, 44 Cal. 29; Alden v. Trubee, 44 Conn. 455; Munson v. Munson, 28 Conn. 582; 73 Am. Dec. 693; Stout v. Cook, 37 Ill. 283; Reed v. Tyler, 56 Ill. 288; Gage v. Billings, 56 Ill. 268; Reed v. Reber, 62 Ill. 240; Lee v. Ruggles, 62 Ill. 427; Kennedy v. Northup, 15 Ill.

trine may be settled by the weight of authority, I must express the opinion that it often operates to produce a

149; *Redmond v. Packenham*, 66 Ill. 434; *Brooks v. Kearns*, 86 Ill. 547; *Burton v. Gleason*, 56 Ill. 25; *Peck v. Sexton*, 41 Iowa, 566; *Gerry v. Stimson*, 60 Me. 186; *Polk v. Rose*, 25 Md. 153; 89 Am. Dec. 773; *Polk v. Reynolds*, 31 Md. 106; *Polk v. Pendleton*, 31 Md. 118; *Briggs v. Johnson*, 71 Me. 235; *Martin v. Graves*, 5 Allen, 601; *Burns v. Lynde*, 6 Allen, 305; *Sullivan v. Finnegan*, 101 Mass. 447; *Russell v. Deshon*, 124 Mass. 342; *Davis v. City of Boston*, 129 Mass. 377; *Merchants' Bank v. Evans*, 51 Mo. 335; *Clark v. Covenant etc. Ins. Co.*, 52 Mo. 272; *Harrington v. Utterback*, 57 Mo. 519; *Keane v. Kyne*, 66 Mo. 216; *Haythorn v. Margerem*, 7 N. J. Eq. 324; *Downing v. Wherrin*, 19 N. H. 9, 91; 49 Am. Dec. 139; *Hall v. Fisher*, 9 Barb. 17; *Buffalo etc. R. R. v. Lampson*, 47 Barb. 533; *Remington Paper Co. v. O'Dougherty*, 81 N. Y. 484; *Cox v. Clift*, 2 N. Y. 118; *Bockes v. Lansing*, 74 N. Y. 437; *Hotchkiss v. Elting*, 36 Barb. 38; *Levy v. Hart*, 54 Barb. 248; *Busbee v. Macy*, 86 N. C. 329; *Busbee v. Lewis*, 85 N. C. 332; *Jones's Heirs v. Perry*, 10 Yerg. 59; 30 Am. Dec. 430; *Johnson v. Cooper*, 2 Yerg. 524; 24 Am. Dec. 502; *Almony v. Hicks*, 3 Head, 39; *Carter v. Taylor*, 3 Head, 30; *Butler v. Rutledge*, 2 Cold. 4; *Whillock v. Grisham*, 3 Sneed, 237; *Williams v. Williams*, 7 Baxt. 116; *Huffman v. Huffman*, 1 Lea, 491; *Jones v. Neale*, 2 Pat. & H. 339; *Carroll v. Brown*, 28 Gratt. 791; *Willis v. Sweet*, 49 Wis. 505; *Bunce v. Gallagher*, 5 Blatchf. 481; *Peirsoll v. Elliott*, 6 Pet. 95; [*Fulgham v. Pate*, 77 Ga. 454; *Conant v. Buesing*, 23 Fla. 559; *Lake Superior Land Co. v. Emerson*, 38 Minn. 406; 8 Am. St. Rep. 679 (cloud on rights of riparian owner created by a deed purporting to convey the soil under the water and beyond low-water mark).

Tax deeds: *Brooks v. Howland*, 58 N. H. 98; *Dull's Appeal*, 113 Pa. St. 510; *Hare v. Carnall*, 39 Ark. 196; *Cassiano v. Ursuline Academy*, 64 Tex. 673.]

Mortgages: *Ramsdell v. Fuller*, 28 Cal. 37; 87 Am. Dec. 103; *City of Hartford v. Chipman*, 21 Conn. 488; *Sherman v. Fitch*, 98 Mass. 59 (per-

sonal property); *Clouston v. Shearer*, 99 Mass. 209; *Comm. v. Smith*, 10 Allen, 448; 87 Am. Dec. 672; *Vogler v. Montgomery*, 54 Mo. 577; *Ward v. Dewey*, 16 N. Y. 519; *Smith v. Fellows*, 9 Jones & S. 36; *Eldridge v. Smith*, 34 Vt. 484; [*Browning v. Laverder*, 104 N. C. 69.]

Assessments for taxes: See last preceding note; *De Witt v. Hays*, 2 Cal. 463; 56 Am. Dec. 352; *Minturn v. Smith*, 3 Saw. 142; *Waterbury Sav. Bank v. Lawler*, 46 Conn. 243; *Gage v. Rohrbach*, 56 Ill. 262; *Gage v. Chapman*, 56 Ill. 311; *Barnett v. Cline*, 60 Ill. 205; *Holland v. Mayor etc.*, 11 Md. 186; 69 Am. Dec. 195; *Scofield v. City of Lansing*, 17 Mich. 437; *Henry v. Gregory*, 29 Mich. 68; *Curtis v. City of East Saginaw*, 35 Mich. 508; *Lockwood v. City of St. Louis*, 24 Mo. 20; *Fowler v. City of St. Joseph*, 37 Mo. 223; *McPike v. Pen*, 51 Mo. 63; *Johnson v. Hahn*, 4 Neb. 139; *Morris Canal etc. Co. v. Jersey City*, 12 N. J. Eq. 227; *Longley v. City of Hudson*, 4 Thomp. & C. 353; *Newell v. Wheeler*, 48 N. Y. 456; *Cong. Shaarai Tephila v. Mayor etc.*, 53 How. Pr. 213; *Hebrew etc. Ass'n v. Mayor etc.*, 4 Hun, 446; *Dederer v. Voorhies*, 81 N. Y. 153; *Van Doren v. Mayor etc.*, 9 Paige, 388; *Heywood v. City of Buffalo*, 14 N. Y. 534; *Howell v. City of Buffalo*, 2 Abb. App. 412; *Overing v. Foote*, 43 N. Y. 290; *Tilden v. Mayor etc.*, 56 Barb. 340; *Sanders v. Village of Yonkers*, 63 N. Y. 489; *Marsh v. City of Brooklyn*, 59 N. Y. 280; *Guest v. City of Brooklyn*, 69 N. Y. 506; *Stuart v. Palmer*, 74 N. Y. 183; 30 Am. Rep. 289; *Townsend v. Mayor etc.*, 77 N. Y. 542; *Wells v. City of Buffalo*, 80 N. Y. 253; *Burnet v. Corp. of Cincinnati*, 3 Ohio, 73; 17 Am. Dec. 582; *Culbertson v. City of Cincinnati*, 16 Ohio. 574; *Shepardson v. Supervisors*, 28 Wis. 593; *Milwaukee Iron Co. v. Town of Hubbard*, 29 Wis. 51; *Hamilton v. City of Fond du Lac*, 25 Wis. 490; *Head v. James*, 13 Wis. 641; [*Union Pac. R'y Co. v. Cheyenne*, 113 U. S. 516; *Powell v. City of Parkersburg*, 28 W. Va. 698; *Eddy v. Township of Lee*, 73 Mich. 123; *Roe v. Lincoln County*, 56 Wis. 66; *State v. Phillips*, 97 Mo. 331; *Northern Pac.*

denial of justice. It leads to the strange scene, almost daily in the courts, of defendants urging that the instruments under which they claim are *void, and therefore that they ought to be permitted to stand unmolested*, and of judges deciding that the court cannot interfere, *because the deed or other instrument is void*, while from a business point of view every intelligent person knows that the instrument is a serious injury to the plaintiff's title, greatly depreciating its market value, and the judge himself who repeats the rule would neither buy the property while thus affected nor loan a dollar upon its security. This doctrine is, in truth, based upon mere verbal logic, rather than upon considerations of justice and expediency.¹

R. R. Co. v. Carland, 5 Mont. 146; Sperry v. City of Albina, 17 Or. 481.]

Judgments and executions: Burt v. Cassety, 12 Ala. 734; Ala. etc. Co. v. Pettway, 24 Ala. 544; Rea v. Longstreet, 54 Ala. 291; Pixley v. Huggins, 15 Cal. 127; Englund v. Lewis, 25 Cal. 337; Shattuck v. Carson, 2 Cal. 588; Hall v. Theisen, 9 Pac. C. L. J. 479; Budd v. Long, 13 Fla. 288; Davidson v. Seegar, 15 Fla. 671; Campbell v. McCahan, 41 Ill. 45; Tucker v. Conwell, 67 Ill. 552; Henderson v. Palmer, 71 Ill. 579; 22 Am. Rep. 117; Groves v. Webber, 72 Ill. 606; Key City etc. Co. v. Munsell, 19 Iowa, 305; Hall v. Whiston, 5 Allen, 126; Hinckley v. Greany, 118 Mass. 595; O'Hare v. Downing, 130 Mass. 16; Barton v. Drake, 21 Minn. 299; Hanson v. Johnson, 20 Minn. 194; Drake v. Jones, 27 Mo. 428; Uhl v. May, 5 Neb. 157; Tucker v. Kenniston, 47 N. H. 267; 93 Am. Dec. 425; Radcliff v. Rowley, 2 Barb. Ch. 23; Lounsbury v. Purdy, 18 N. Y. 515; Tisdale v. Jones, 38 Barb. 523; Brown v. Goodwin, 75 N. Y. 409; Fonda v. Sage, 48 N. Y. 173; Farnham v. Campbell, 34 N. Y. 480; Schroeder v. Gurney, 73 N. Y. 430; Mulligan v. Baring, 3 Daly, 75; Tear v. Mathews, Wright, 371; Bank of U. S. v. Schultz, 2 Ohio, 471; Norton v. Beaver, 5 Ohio, 178; Merriman v. Polk, 5 Heisk. 717;

Rooney v. Soule, 45 Vt. 303; Goodell v. Blumer, 41 Wis. 436; Gamble v. Loop, 14 Wis. 465; Moore v. Cord, 14 Wis. 213; Standish v. Dow, 21 Iowa, 363; [Sharp v. Tatnall, 5 Del. Ch. 302; Graham v. Hall, 68 Ga. 354; Cowan v. Sapp, 74 Ala. 44; Bank v. Ewing, 12 Lea, 598; Bishop v. Moorman, 98 Ind. 1; 49 Am. Rep. 731; Bristol v. Hallyburton, 93 N. C. 384 (no cloud); Ketchin v. McCarley, 26 S. C. 1; 4 Am. St. Rep. 674; Shally v. Spillman, 19 Fla. 500 (no cloud). But see Thomas v. West, 59 Wis. 103.]

Miscellaneous cases: Mayor etc. v. North Shore etc. Co., 9 Hun, 620 (lease); Spofford v. Bangor etc. R. R., 66 Me. 51 (ditto); Larmon v. Jordan, 56 Ill. 204 (land contract placed on record); Sea v. Morehouse, 79 Ill. 216 (ditto); Boyd v. Schlesinger, 59 N. Y. 301 (ditto); Washburn v. Burnham, 63 N. Y. 132 (ditto); Nickerson v. Loud, 115 Mass. 94 (papers recorded giving notice of claim to land); Sanxay v. Hunger, 42 Ind. 44 (papers recorded giving notice of dispute as to right of way); Yanger v. Skinner, 14 N. J. Eq. 389 (findings of commission of lunacy).

¹ [In Day Company v. State, 68 Tex. 526, the foregoing criticism upon the general rule was quoted and approved, and an instrument void upon its face was canceled.]

FIFTH GROUP.

REMEDIES BY WHICH EQUITABLE OBLIGATIONS ARE SPECIFICALLY AND DIRECTLY ENFORCED.

CHAPTER FIRST.

SPECIFIC PERFORMANCE OF CONTRACTS.

ANALYSIS.

- § 1400. Nature and object.
- § 1401. Specific performance of contracts; grounds of the jurisdiction.
- § 1402. Extent of the jurisdiction; inadequacy of damages; various kinds of contracts.
- § 1403. The same: Impracticability of the legal remedy.
- § 1404. The jurisdiction discretionary.
- § 1405. Essential elements and incidents.
- § 1406. Rights under the contract; effect of events without the agency of the parties.
- § 1407. Performance by plaintiff a condition precedent.
- § 1408. Time as affecting the right to a performance.
- § 1409. Enforcement of verbal contracts part performed.
- § 1410. Damages in place of a specific performance.

§ 1400. **Nature and Object.** — The remedies embraced in this group are all purely equitable, and the rights of the complainant and obligations of the defendant which are enforced by their means are also equitable.¹ They belong, therefore, to the exclusive jurisdiction of equity. Their distinctive object is to specifically enforce the complainant's equitable right, and to compel the defendant to specifically perform the actual equitable obligation which rests upon him. This group, as a whole, contains the specific performance of contracts, including the per-

¹ Although contracts may also give rise to a legal right, yet when equity compels their specific performance, it enforces the equitable obligation aris-

ing from them, and not the legal duty. In most cases, it turns the vendee's equitable *estate* into a legal one.

formance of verbal contracts for the sale of land which have been part performed, and the delivery up of specific chattels; the specific enforcement of trusts, express and implied; and the specific enforcement of obligations arising from fiduciary relations analogous to trusts.¹

§ 1401. **Specific Performance of Contracts — Ground of the Jurisdiction.**—The remedy of the specific performance of contracts is purely equitable, given as a substitute for the legal remedy of compensation, whenever the legal remedy is inadequate or impracticable. In the language of Lord Selborne: "The principle which is material to be considered is, that the court gives specific performance instead of damages only when it can by that means *do more perfect and complete justice.*"² The jurisdiction depending upon this broad principle is exercised in two classes of cases: 1. Where the subject-matter of the contract is of such a special nature, or of such a peculiar value, that the damages, when ascertained according to legal rules, would not be a just and reasonable substitute for or representative of that subject-matter in the hands of the party who is entitled to its benefit; or in other words, where the damages are *inadequate*; 2. Where, from some special and practical features or incidents of the contract inhering either in its subject-matter, in its terms, or in the relations of the parties, it is impossible to arrive at a legal measure of damages at all, or at least with any

¹ The indirect specific enforcement of certain contracts by means of an injunction has already been considered in a preceding chapter (§§ 1341-1344), and will not be here discussed.

² *Wilson v. Northampton etc. R'y*, L. R. 9 Ch. 279, 284. The foundation and measure of the jurisdiction is the desire to do justice, which the legal remedy would fail to give. This justice is primarily due to the plaintiff, but not exclusively, for the equities of the defendant are also protected. Specific performance is, therefore, a conscious attempt on the part of the court to do complete justice to both the parties with respect to all the

judicial relations growing out of the contract between them: See *Buxton v. Lister*, 3 Atk. 383; *Wright v. Bell*, 5 Price, 325, 328, 329; *Adderley v. Dixon*, 1 Sim. & St. 607, 610; *Ord v. Johnston*, 1 Jur., N. S., 1063, 1064. It follows, therefore, that the remedial right, if it exists at all, must be mutual; each party must be able to enforce the remedy against the other: *Adderley v. Dixon*, *supra*; *Old Colony R. R. v. Evans*, 6 Gray, 25; 66 Am. Dec. 394; *Brown v. Haff*, 5 Paige, 235; 28 Am. Dec. 425; *Schroeppel v. Hopper*, 40 Barb. 425; *Hopper v. Hopper*, 16 N. J. Eq. 147; but see *Jones v. Newhall*, 115 Mass. 244; 15 Am. Rep. 97.

sufficient degree of certainty, so that *no* real compensation can be obtained by means of an action at law; or in other words, where damages are *impracticable*.¹

§ 1402. **Extent of the Jurisdiction—Inadequacy of Damages.**—The object of the present discussion is to determine the general classes of contracts which come within the jurisdiction, and which may be specifically enforced. Whether any particular contract belonging to one of these classes will actually be thus enforced depends upon other equitable elements, to be described hereafter. *Lands:* Where land, or any estate therein, is the subject-matter of the agreement, the inadequacy of the legal remedy is well settled, and the equitable jurisdiction is firmly established.² Whenever a contract concerning real property

¹ The ground of the jurisdiction may be practically stated thus: that an award of damages will not put the party in a situation as beneficial to him as if the agreement were specifically performed: *Harnett v. Yielding*, 2 Schoales & L. 549, 553; *Phyfe v. Wardell*, 2 Edw. Ch. 47; *Stuyvesant v. The Mayor etc.*, 11 Paige, 414; *Richmond v. Dubuque etc. R. R.*, 33 Iowa, 422; *Blanchard v. Detroit etc. R. R.*, 31 Mich. 43; 18 Am. Rep. 142; *Bogan v. Daughdrill*, 51 Ala. 312; *Willard v. Tayloe*, 8 Wall. 557; *Somerby v. Buntin*, 118 Mass. 279; 19 Am. Rep. 459; *McGarvey v. Hall*, 23 Cal. 140; [*Frue v. Houghton*, 6 Col. 318.]

² [§ 221, and note;] *Harnett v. Yielding*, 2 Schoales & L. 549, 553, 554; *Adderley v. Dixon* 1 Sim. & St. 607; *Cud v. Rutter*, 1 P. Wms. 570, 571; *Hollis v. Edwards*, 1 Vern. 159; *Duff v. Fisher*, 15 Cal. 375; *McGarvey v. Hall*, 23 Cal. 140; *Kirksey v. Fike*, 27 Ala. 383; 62 Am. Dec. 768; *Bogan v. Daughdrill*, 51 Ala. 312; *Barnes v. Barnes*, 65 N. C. 261; *Richmond v. Dubuque etc. R. R.*, 33 Iowa, 422; *Blanchard v. Detroit etc. R. R.*, 31 Mich. 43; 18 Am. Rep. 142; *Willard v. Tayloe*, 8 Wall. 557; *Somerby v. Buntin*, 118 Mass. 279; 19 Am. Rep. 459. *Contracts to give or renew a lease:* *Furnival v. Crew*, 3 Atk. 83, 87; *Tritton v. Foote*, 2 Brown Ch. 636; *Burke v. Smyth*, 3 Jones & L. 193; *Moss v. Barton*, L. R. 1 Eq. 474;

Buckland v. Papillon, L. R. 2 Ch. 67; *Clark v. Clark*, 49 Cal. 586; *Switzer v. Gardner*, 41 Mich. 164; [*Wallace v. Scoggins*, 17 Or. 476; *Myers v. Silljacks*, 58 Md. 319.] *Contracts for mortgages:* *Ashton v. Corrigan*, L. R. 13 Eq. 76; *Hermann v. Hodges*, L. R. 16 Eq. 18; *De Pierres v. Thorn*, 4 Bosw. 266; *City etc. Ins. Co. v. Olmsted*, 33 Conn. 476; *St. Paul Division etc. v. Brown*, 11 Minn. 356; *McClinck v. Laing*, 22 Mich. 212; *Dean v. Anderson*, 34 N. J. Eq. 496; [*Hicks v. Turck*, 72 Mich. 311; *Irvine v. Armstrong*, 31 Minn. 216.] *Family settlements:* *Wistar's Appeal*, 80 Pa. St. 484; *Henry v. Henry*, 27 Ohio St. 121; [*Stratton v. Stratton*, 58 N. H. 473; 42 Am. Rep. 604.] *Bond to convey land:* *Ewins v. Gordon*, 49 N. H. 444. *Contracts concerning land in another country or state:* *Penn v. Lord Baltimore*, 1 Ves. Sr. 444; *Lord Portarlington v. Soulby*, 3 Mylne & K. 104; *Sutphen v. Fowler*, 9 Paige, 280; *Brown v. Desmond*, 100 Mass. 267; *Davis v. Parker*, 14 Allen, 94; [*Hicks v. Turck*, 72 Mich. 311; *Patter v. Hollister*, 45 N. J. Eq. 508.] For other contracts concerning land, see *Johnson v. Johnson*, 40 Md. 189; *McNamee v. Withers*, 37 Md. 171; *Bleakley's Appeal*, 66 Pa. St. 187; *Seichrist's Appeal*, 66 Pa. St. 237; *Rogers v. Williams*, 8 Phila. 123; *Green v. Richards*, 23 N. J. Eq. 32, 536; *Colgate's Ex'r v. Colgate*, 23

is in its nature and incidents entirely unobjectionable, — when it possesses none of those features which, in ordinary language, influence the discretion of the court, — it is as much a matter of course for a court of equity to decree its specific performance as it is for a court of law to give damages for its breach. *Chattels*: On the contrary, the doctrine is equally well settled that equity will not, in general, decree the specific performance of contracts concerning chattels, because their money value recovered as damages will enable the party to purchase others in the market of like kind and quality.¹ *Exceptions*: Where, however, particular chattels have some special value to the owner over and above any pecuniary estimate, — the *pretium affectionis*, — and where they are unique, rare, and incapable of being reproduced by money damages, equity will decree a specific delivery of them to their owner, and the specific performance of contracts concerning them.²

N. J. Eq. 372; Reynolds v. O'Neil, 26 N. J. Eq. 223; Wynn v. Smith, 40 Ga. 457; Porter v. Allen, 54 Ga. 623; Riddle v. Cameron, 50 Ala. 263; Warren v. Daniels, 72 Ill. 272; Yoakum v. Yoakum, 77 Ill. 85; Page Co. v. American etc. Co., 41 Iowa, 115; Warren v. Ewing, 34 Iowa, 168; Law v. Henry, 39 Ind. 414; Au Gres Boom Co. v. Whitney, 26 Mich. 42; Williams v. McGuire, 60 Mo. 254; Kuhn v. Freeman, 15 Kan. 423; Reese v. Board of Police etc., 49 Miss. 639; Grier v. Rhyne, 69 N. C. 346; Wright v. Pucket, 22 Gratt. 370; Ambrouse's Heirs v. Keller, 22 Gratt. 769; Chartier v. Marshall, 51 N. H. 400; Hayes v. Harmony Grove Cemetery, 108 Mass. 400; McClaskey v. Mayor etc., 64 Barb. 310; Olney v. Eaton, 66 Mo. 563; Gartrell v. Stafford, 12 Neb. 545; 41 Am. Rep. 767; Wormley v. Wormley, 98 Ill. 544; Bonner v. Little, 38 Ark. 397; Coffman v. Robbins, 8 Or. 278; [Hermann v. Babcock, 103 Ind. 461; Nunez v. Morgan, 77 Cal. 427. *Judicial sales*: Henry v. McKerlie, 78 Mo. 416; Gregory v. Tingley, 18 Neb. 319. *Concerning use of right of way of railroad companies*: Cornwall etc. R. R. Co.'s Appeal, 125 Pa. St. 232; Central

T. Co. v. W., St. L., & P. R'y Co., 29 Fed. Rep. 546.]

¹ Cud v. Rutter, 1 P. Wms. 570; Nutbrown v. Thornton, 10 Ves. 159; Adderley v. Dixon, 1 Sim. & St. 607, 608; Buxton v. Lister, 3 Atk. 383; Pierce v. Plumb, 74 Ill. 326; Collins v. Karatopsky, 36 Ark. 316; Bubier v. Bubier, 24 Me. 42; Cowles v. Whitman, 10 Conn. 121, 124; 25 Am. Dec. 60; Gram v. Stebbins, 6 Paige, 124; Phillips v. Berger, 2 Barb. 608; 8 Barb. 527; Scott v. Billgerly, 40 Miss. 119; McLaughlin v. Piatti, 27 Cal. 451; Ashe v. Johnson's Adm'r, 2 Jones Eq. 149.

² This class includes, — 1. Articles of special value to their owner, but of no general pecuniary value; and 2. Articles of such great rarity and value that they cannot be replaced by money, — paintings, statues, etc. The jurisdiction will be exercised to compel their delivery by one who wrongfully detains them, or to compel the specific execution of a contract for their sale or delivery. As illustrations, see Pusey v. Pusey, 1 Vern. 273 (an ancient horn); Duke of Somerset v. Cookson, 3 P. Wms. 389 (an antique silver patera); Fells v. Read, 3 Ves. 70; Lloyd v. Loaring, 6 Ves. 773;

Things in action: Contracts for the sale or assignment of things in action may be enforced by the purchaser, by compelling a transfer and delivery, where the legal damages might be too uncertain and conjectural to constitute an adequate compensation. And since the remedy must be mutual, the vendor may also maintain the action in such cases.¹ *Awards:* An award is treated as the continu-

Nutbrown v. Thornton, 10 Ves. 159, 161, 163; Wallwyn v. Lee, 9 Ves. 24, 33; Saville v. Tankred, 1 Ves. Sr. 101; 3 Swanst. 141, note; Wood v. Rowcliffe, 3 Hare, 304; 2 Phill. Ch. 382; Lady Arundell v. Phipps, 10 Ves. 139; Lowther v. Lord Lowther, 13 Ves. 95; Pearne v. Lisle, Amb. 75, 77; Falcke v. Gray, 4 Drew, 651 (rare works of art); Clark v. Flint, 22 Pick. 231; 33 Am. Dec. 733; McGowin v. Remington, 12 Pa. St. 56; 51 Am. Dec. 584 (valuable private maps and charts). Analogous to this jurisdiction and for the same reasons, equity will decree the delivery up to the lawful owner of deeds and other written muniments of title: Brown v. Brown, 1 Dick. 62; Tanner v. Wise, 3 P. Wms. 294, 296; Duncombe v. Mayer, 8 Ves. 320; Freeman v. Fairlie, 3 Mer. 29, 30; Reece v. Trye, 1 De Gex & S. 273; Lady Beresford v. Driver, 14 Beav. 387; 16 Beav. 134; Turner v. Letts, 20 Beav. 185, 191; Gibson v. Ingo, 6 Hare, 112; Cowles v. Whitman, 10 Conn. 121; 25 Am. Dec. 60; Hill v. Rockingham Bank, 44 N. H. 567; [Baum's Appeal, 113 Pa. St. 58; Williams v. Carpenter, 14 Col. 477; Pattison v. Skillman, 34 N. J. Eq. 344, and note.] If a trust or fiduciary relation exists in reference to the chattels, if an express trust has been created by the contract or an implied trust has arisen from the acts or omissions of the parties, then equity will exercise its jurisdiction to compel the specific performance of such contract, whether the chattels are common or special, since the court will always enforce a trust: Wood v. Rowcliffe, 3 Hare, 304; 2 Phill. Ch. 382; Pooley v. Budd, 14 Beav. 34; Stanton v. Percival, 5 H. L. Cas. 257, 268; Clark v. Flint, 22 Pick. 231; Cowles v. Whitman, 10 Conn. 121; 25 Am. Dec. 60; Hill v. Rockingham Bank, 44 N. H. 567; McGowin v. Reming-

ton, 12 Pa. St. 56; 51 Am. Dec. 584; Abbott's Ex'r v. Reeves, 49 Pa. St. 494; 88 Am. Dec. 510; Peer v. Kean, 14 Mich. 354; [Goodwin Co.'s Appeal, 117 Pa. St. 514; 2 Am. St. Rep. 696; Henderson v. Johns, 13 Col. 280; and see Weaver v. Fisher, 110 Ill. 146.]

¹ Assignment of debts: Adderley v. Dixon, 1 Sim. & St. 607; Cutting v. Dana, 25 N. J. Eq. 265; purchase of an annuity: Withy v. Cottle, 1 Sim. & St. 174; Clifford v. Turrell, 1 Younge & C. Ch. 138; Kenney v. Wexham, 6 Madd. 355; assignment of patent rights: Cogent v. Gibson, 33 Beav. 557; Corbin v. Tracy, 34 Conn. 325; Somerby v. Buntin, 118 Mass. 279; 19 Am. Rep. 459; Binney v. Annan, 107 Mass. 94; 9 Am. Rep. 10; [Hapgood v. Rosenstock, 23 Fed. Rep. 86; Adams v. Messinger, 147 Mass. 185; 9 Am. St. Rep. 679; Fuller etc. Mfg. Co. v. Bartlett, 63 Wis. 73; 60 Am. Rep. 838; Searle v. Hill, 73 Iowa, 368; 5 Am. St. Rep. 688; Blackmer v. Stone, 51 Ark. 489.] See also, as illustrations, Wright v. Bell, 5 Price, 325; Hughes v. Piedmont etc. Ins. Co., 55 Ga. 111; Tuttle v. Moore, 16 Minn. 123; Woodward v. Harris, 3 Sand. 272; [Gottschalk v. Stein, 69 Md. 51.] *Stocks:* It is the settled rule in England and in the United States that contracts for public securities, government stocks, bonds, etc., will not be enforced, since they can always be bought in the market: Doloret v. Rothschild, 1 Sim. & St. 590; Shaw v. Fisher, 5 De Gex, M. & G. 596. But contracts for the sale of railway and other business corporation shares and bonds will be enforced in England: Duncuft v. Albrecht, 12 Sim. 169; Shaw v. Fisher, *supra*; Cheale v. Kenward, 3 De Gex & J. 27; Hawkins v. Maltby, L. R. 3 Ch. 188; 4 Ch. 200. The recent English reports abound in such cases. In the United States all such securities are ordinarily purchas-

ance of the agreement to submit. If it directs acts to be done which, if stipulated for in a contract, would render such contract capable of enforcement, then the award itself may be specifically enforced.¹ *Special contracts*: The jurisdiction does not depend upon the nature of the contract nor of the subject-matter, but it will be exercised wherever the legal remedy is inadequate. It has been applied to a great number of special agreements.² The

able in the market, and the rule is settled by the weight of authority that contracts concerning stocks and bonds of corporations, like those concerning government securities, will not be specifically enforced: *Fallon v. Railroad Co.*, 1 Dill. 121; *Ross v. Union Pac. R'y*, 1 Woolw. 26, 36; *Bissell v. Farmers' and Mechanics' Bank*, 5 McLean, 495; *Cowles v. Whitman*, 10 Conn. 121, 124; 25 Am. Dec. 60; *Gram v. Stebbins*, 6 Paige, 124; *Carpenter v. Mutual etc. Ins. Co.*, 4 Sand. Ch. 408; *Lowry v. Muldrow*, 8 Rich. Eq. 241; *Strasburg R. R. v. Echternacht*, 21 Pa. St. 220; 60 Am. Dec. 49; *Sullivan v. Tuck*, 1 Md. Ch. 59; *Ferguson v. Paschall*, 11 Mo. 267; [*Eckstein v. Downing*, 64 N. H. 248; 10 Am. St. Rep. 404; *De la Cuesta v. Insurance Co.*, 136 Pa. St. 62; *Avery v. Ryan*, 74 Wis. 591; *Frue v. Houghton*, 6 Col. 318.] A few cases more incline towards the English rule: See *Ashe v. Johnson's Admr.*, 2 Jones Eq. 149; *Baldwin v. Commonwealth*, 11 Bush, 417; *Treasurer v. Commercial etc. Co.*, 23 Cal. 390; *Todd v. Taft*, 7 Allen, 371. [That the agreement may be specifically enforced when the stock is not easily to be purchased in the market, see *Johnson v. Brooks*, 93 N. Y. 337; *Frue v. Houghton*, 6 Col. 318; but see *Barton v. De Wolf*, 108 Ill. 195. Or under special circumstances: *Goodwin Co.'s Appeal*, 117 Pa. St. 514; 2 Am. St. Rep. 696 (contract creates a trust).]

¹ For example, awards directing the conveyance of land, etc.: *Blackett v. Bates*, L. R. 1 Ch. 117; *Norton v. Mascall*, 2 Vern. 24; *Hall v. Hardy*, 3 P. Wms. 187; *Memphis etc. R. R. v. Scruggs*, 50 Miss. 284; *Overby v. Thrasher*, 47 Ga. 10; *Story v. Norwich etc. R. R.*, 24 Conn. 94; *Kirksey v. Fike*, 27 Ala. 383; 62 Am. Dec.

768; *McNeil v. Magee*, 5 Mason, 244; *Jones v. Boston Mill Corp.*, 4 Pick. 507; 16 Am. Dec. 358; *Davis v. Harvard*, 15 Serg. & R. 165, 171; 16 Am. Dec. 537; *Somerville v. Trueman's Devisees*, 4 Har. & McH. 43; 1 Am. Dec. 389; *Cook v. Vick*, 2 How. (Miss.) 882; but not an award directing merely a payment of money: *Hall v. Hardy*, *supra*; *Story v. Norwich etc. R. R.*, *supra*; *Bubier v. Bubier*, 24 Me. 42.

² These agreements are so various that it is difficult to classify them. The following cases are cited as illustrations: *Special contracts concerning chattels*: *Buxton v. Lister*, 3 Atk. 383; *Taylor v. Neville*, cited 3 Atk. 384; *Duke of Buckingham v. Ward*, cited 3 Atk. 385; [as for the sale of goods which the vendor alone can supply: *Adams v. Messinger*, 147 Mass. 185; 9 Am. St. Rep. 679; *Equitable Gas Light Co. v. Baltimore etc. Co.*, 63 Md. 285; and see *Singer v. Carpenter*, 125 Ill. 117; at the suit of vendor of chattels: *Rothholz v. Schwartz*, 46 N. J. Eq. 477; 19 Am. St. Rep. 409.] *Agreement to pay off or discharge a mortgage*: *Barkley v. Barkley*, 14 Rich. Eq. 12; *Bennett v. Abrams*, 41 Barb. 619; *Weir v. Mundell*, 3 Brewst. 594; *Howe v. Nickerson*, 14 Allen, 400; *Stark v. Wilder*, 36 Vt. 752. *Contract to insure*: *Taylor v. Merchants' etc. Ins. Co.*, 9 How. 390; *Carpenter v. Mut. etc. Ins. Co.*, 4 Sand. Ch. 408; *Neville v. Merchants' etc. Ins. Co.*, 19 Ohio, 452; *Woody v. Old Dominion Ins. Co.*, 31 Gratt. 362; 31 Am. Rep. 732; [*Haden v. Farmers' etc. Ass'n*, 80 Va. 683; compare *Knott v. Mannf. Co.*, 30 W. Va. 790.] *Agreement to compromise and discharge a judgment*: *Phillips v. Berger*, 2 Barb. 608; 8 Barb. 527. *Agreement to indemnify*: *Chamberlain v.*

cases of contracts for personal acts, and for building and construction, are considered in the foot-note.

Blue, 6 Blackf. 491; but *per contra*, *Hoy v. Hansborough*, Freem. (Miss.) 533. *Antenuptial contract concerning personal property*: *Tarbell v. Tarbell*, 10 Allen, 278; *Sullings v. Sullings*, 9 Allen, 234; *Gough v. Crane*, 3 Md. Ch. 119; — Md. 316. *Miscellaneous cases*: *Thorn v. Comm'rs etc.*, 32 Beav. 490; *Schotsmans v. Lancashire etc. R'y*, L. R. 2 Ch. 332; *Very v. Levy*, 13 How. 345; *Kirksey v. Fike*, 27 Ala. 383; 62 Am. Dec. 768; *McKnight v. Robbins*, 5 N. J. Eq. 229, 642; *Ashe v. Johnson's Adm'r*, 2 Jones Eq. 149; *Sullivan v. Luck*, 1 Md. Ch. 59; *Hall v. Joiner*, 1 S. C. 186; *Starnes v. Newsom*, 1 Tenn. Ch. 239; *Furman v. Clark*, 11 N. J. Eq. 306; *Steward v. Winters*, 4 Sand. Ch. 587; *Stayvesant v. Mayor etc.*, 11 Paige, 414; *Hall v. Hiles*, 2 Bush, 532; *McMullen v. Vanzant*, 73 Ill. 190; *Watson v. Smith*, 7 Or. 448 (contract of support); *Shields v. Whitaker*, 82 N. C. 516 (to apply land in payment of debts); *Reiley v. Roberts*, 34 N. J. Eq. 299 (to cancel judgment); *Apperson v. Gogin*, 3 Ill. App. 48 (to credit value of property on judgment); *Reybold v. Herdman*, 2 Del. Ch. 34 (indemnity); *Williams v. Vreeland*, 32 N. J. Eq. 135 (agreement to hold a legacy for benefit of a third person); *Coffman v. Robbins*, 8 Or. 278 (by riparian owners to divide water); *Boardman v. Lake Shore etc. R'y*, 84 N. Y. 157 (concerning preferred and guaranteed stock). [See also *Floyd v. Storrs*, 144 Mass. 56 (of agreement for lease of a newspaper); *Covenant Mut. Ben. Ass'n v. Sears*, 114 Ill. 108 (of contract by a benefit association to levy an assessment, there being no adequate legal remedy). In the following cases specific performance was not decreed: *Bradford etc. R. R. Co. v. N. Y., L. E., & W. R. R. Co.*, 123 N. Y. 316 (agreement to make advances to meet obligations of another); *Conklin v. People's Building Ass'n*, 41 N. J. Eq. 20 (agreement to borrow or lend money).] *Contracts for personal acts*: As an almost universal rule, these contracts will not be directly enforced: [See *post*, § 1405, last note.] (They may sometimes be indirectly enforced by injunction: §§ 1343, 1344.) There are a few special exceptions. As an illustration, agree-

ments for separation between husband and wife will be specifically enforced, if valid: *Wilson v. Wilson*, 1 H. L. Cas. 538; 5 H. L. Cas. 40; 14 Sim. 405; *Gibbs v. Harding*, L. R. 5 Ch. 336; 8 Eq. 490; *McCrocklin v. McCrocklin*, 2 B. Mon. 370; [see § 932.] *Contracts for building and construction*: In general, the specific performance of these contracts will not be decreed, because the court cannot, by its ordinary means and instrumentalities, enforce its decree: *Errington v. Aynesly*, 2 Brown Ch. 341; *Lucas v. Comerford*, 3 Brown Ch. 166; *Paxton v. Newton*, 2 Smale & G. 437; *Mosely v. Virgin*, 3 Ves. 184; e. g., to work a gravel pit: *Flint v. Brandon*, 8 Ves. 159; construction of a railway: *South Wales R'y v. Wythes*, 1 Kay & J. 186; 5 De Gex, M. & G. 880; *Port Clinton R. R. v. Cleveland etc. R. R.*, 13 Ohio St. 544; *Fallon v. R. R. Co.*, 1 Dill. 121; *Ross v. Union Pac. R'y*, 1 Woolw. 26; [*Oregonian R'y Co. v. O. R'y & N. Co.*, 37 Fed. Rep. 733;] to work quarries: *Booth v. Pollard*, 4 Younge & C. 61; *Marble Co. v. Ripley*, 10 Wall. 339; or mines: *Pollard v. Clayton*, 1 Kay & J. 462; [*Koch's Appeal*, 93 Pa. St. 434; to drain lands: *McCarter v. Armstrong*, 32 S. C. 203.] The English courts have established exceptions to this rule, and enforce such contracts in four classes of cases, viz.: 1. Where the agreement to erect a building is defined and certain: *Mosely v. Virgin*, 3 Ves. 184, 185; *Flint v. Brandon*, 8 Ves. 159, 164; *Cubitt v. Smith*, 10 Jur., N. S., 1123; *Phillips v. Soule*, 9 Gray, 233; and see *Brace v. Wehnert*, 25 Beav. 348. 2. Where the defendant has contracted to construct some defined work on his own land, and the plaintiff has a material interest therein not susceptible of adequate compensation in damages: *Storer v. Great W. R'y*, 2 Younge & C. Ch. 48; *Sanderson v. Cockermonth etc. R'y*, 11 Beav. 497; *Franklyn v. Tuton*, 5 Madd. 469; *Middleton v. Greenwood*, 2 De Gex, J. & S. 142; *Wilson v. West Hartlepool R'y*, 2 De Gex, J. & S. 475; *Wilson v. Northampton etc. R'y*, L. R. 9 Ch. 279; *Att'y-Gen. v. Mid-Kent R'y*, L. R. 3 Ch. 100. 3. Where defendant has con-

§ 1403. **The Same.** Impracticability of a Legal Remedy. — This ground of the jurisdiction includes two classes of cases: 1. Where, from the lack of some legal formality or condition in the contract, no action at law can be maintained; 2. Where, from some peculiar feature of the contract, either in its subject-matter or in its terms, or in the relations of the parties, it is impossible to arrive at a legal measure of damages at all, or at least with any sufficient degree of certainty.¹ The most important instances in which the jurisdiction is referable to this ground are, — 1. Contracts which the plaintiff has not fully performed, or even cannot fully perform, on his part, but which equity enforces with compensation for his partial failure; 2. Contracts invalid at law, especially verbal contracts concerning land; 3. Contracts which are incomplete in their terms.

tracted to construct works on land acquired by conveyance from the plaintiff, etc.: *So. Wales R'y v. Wythes*, 1 Kay & J. 186, 200; *Price v. Corpor. of Penzance*, 4 Hare, 506; *Wilson v. Furness R'y*, L. R. 9 Eq. 28; *Hood v. North East. R'y*, L. R. 5 Ch. 525; 8 Eq. 666; *Firth v. Midland R'y*, L. R. 20 Eq. 100. 4. Where there has been a part performance, so that the defendant is enjoying the benefits *in specie*: *Price v. Corpor. of Penzance*, 4 Hare, 506, 509. See also *Stuyvesant v. Mayor etc.*, 11 Paige, 414 (constructing a drain); *Birchett v. Bolling*, 5 Munf. 442 (erecting a building); *Whitney v. New Haven*, 23 Conn. 624; *Gregory Ingwersen*, 32 N. J. Eq. 199 (to erect a structure). [See also *Hooper v. Savannah etc. R. R. Co.*, 69 Ala. 529.]

¹ Under this head are included, — 1. Contracts in which the plaintiff has not performed, or even cannot perform, all the conditions on his part, so as to maintain an action at law, but which equity still may treat as binding and enforce. In such cases, if the contract is otherwise a proper one, equity will decree a specific performance with such allowances or compensations as are just: *Mortlock v. Buller*, 10 Ves. 292, 305, 306; *Stewart v. Alliston*, 1 Mer. 26, 32; [*post*,

§ 1407, note.] Even where the partial failure or inability results from the plaintiff's own fault: *Davis v. Hone*, 2 Schoales & L. 341, 347; *Voorhees v. De Meyer*, 2 Barb. 37; *Coale v. Barney*, 1 Gill & J. 324; *McCorkle v. Brown*, 9 Smedes & M. 167. [See *Day v. Hunt*, 112 N. Y. 191; *ante*, § 1297.] 2. Contracts not valid at all at law, but which equity treats as binding on the conscience. By far the most important are verbal contracts concerning land which are invalid by the statute of frauds, but which, if part performed, equity will enforce: *Kirk v. Bromley Union*, 2 Phill. Ch. 640; *Gough v. Crane*, 3 Md. Ch. 119; 4 Md. 316; see *post*, § 1409, where this subject is treated. Under this head are also included certain agreements void at the old common law, but which equity enforces; e. g., assignments of expectancies; agreements to assign things in action; contracts between a man and woman, who afterwards marry: *Cannel v. Buckle*, 2 P. Wms. 243; *Gould v. Womack*, 2 Ala. 83. [See § 1297.] 3. Contracts incomplete in their terms: *Buxton v. Lister*, 3 Atk. 383; *Doloret v. Rothschild*, 1 Sim. & St. 590; *Phillips v. Thompson*, 1 Johns. Ch. 131.

§ 1404. **The Jurisdiction Discretionary.**—The object of the foregoing paragraphs is to formulate the general rules which determine the classes of contracts in which the equitable jurisdiction *may* be exercised. But even when a particular contract belongs to such a class, the right to its specific performance is not absolute, like the right to recover a legal judgment. The granting the equitable remedy is, in the language ordinarily used, a matter of discretion, not of an arbitrary, capricious discretion, but of a sound judicial discretion, controlled by established principles of equity, and exercised upon a consideration of all the circumstances of each particular case. Where, however, the contract is in writing, is certain in its terms, is for a valuable consideration, is fair and just in all its provisions, and is capable of being enforced without hardship to either party, it is as much a matter of course for a court of equity to decree its specific performance as for a court of law to award a judgment of damages for its breach. This is the ordinary language of judges and text-writers.¹ The term “discretionary” as thus used is, in my opinion, misleading

¹ The following are a few illustrations: Radcliffe v. Warrington, 12 Ves. 326, 332; Joynes v. Statham, 3 Atk. 388; Underwood v. Hitchcox, 1 Ves. Sr. 279; Willard v. Tayloe, 8 Wall. 557, 565; Marble Co. v. Ripley, 10 Wall. 339, 356; Lowry v. Buffington, 6 W. Va. 249, 255; Fish v. Lightner, 44 Mo. 268, 272; Fish v. Leser, 69 Ill. 394, 395; Stone v. Pratt, 25 Ill. 25, 34; Quinn v. Roath, 37 Conn. 16, 24; McComas v. Easley, 21 Gratt. 23, 29; Hale v. Wilkinson, 21 Gratt. 75, 80; Cooper v. Pena, 21 Cal. 403, 411; Bruck v. Tucker, 42 Cal. 346, 353; Bogan v. Daughdrill, 51 Ala. 312, 314; Aston v. Robinson, 49 Miss. 348, 351; Daniel v. Frazer, 40 Miss. 507; Weise's Appeal, 72 Pa. St. 351, 354; Snell v. Mitchell, 65 Me. 48, 50; Blackwilder v. Loveless, 21 Ala. 371, 374; Port Clinton R. R. v. Cleveland etc. R. R., 13 Ohio St. 544, 549; Rogers v. Saunders, 16 Me. 92, 97; 33 Am. Dec. 635; Seymour v. Delancey, 6 Johns.

Ch. 222, 224; 3 Cow. 445; 15 Am. Dec. 270; Lamare v. Dixon, L. R. 6 H. L. 414, 423; Tilley v. Thomas, L. R. 3 Ch. 61, 72; Mississippi etc. R. R. v. Cromwell, 91 U. S. 643; Eastman v. Plumer, 46 N. H. 464; Sharps Rifle M. Co. v. Rowan, 35 Conn. 127; Sherman v. Wright, 49 N. Y. 227; Cuff v. Dorland, 55 Barb. 481; Seaman v. Van Rensselaer, 10 Barb. 81; Plummer v. Keppler, 26 N. J. Eq. 481; Crane v. Decamp, 21 N. J. Eq. 414; Merritt v. Brown, 21 N. J. Eq. 401; Smoot v. Rea, 19 Md. 398; Godwin v. Collins, 4 Houst. 28; Humbard's Heirs v. Humbard's Heirs, 3 Head, 100; Phillips v. Stauch, 20 Mich. 369; Bowman v. Cunningham, 78 Ill. 48; Auter v. Miller, 18 Iowa, 405; St. Paul Division etc. v. Brown, 9 Minn. 157; Burke v. Seely, 46 Mo. 334; Taylor v. Williams, 45 Mo. 80; [Blake v. Flatley, 44 N. J. Eq. 228; 6 Am. St. Rep. 886; Hennessy v. Woolworth, 128 U. S. 440. See § 1405.]

and inaccurate. The remedy of specific performance is governed by the same general rules which control the administration of all other equitable remedies. The right to it depends upon elements, conditions, and incidents, which equity regards as essential to the administration of all its peculiar modes of relief. When all these elements, conditions, and incidents exist, the remedial right is perfect in equity.¹ So far as these essential elements and conditions do not relate to the existence of contracts binding in equity, they are nothing but expressions and applications of the fundamental principles, he who seeks equity must do equity, and he who comes into equity must come with clean hands.²

§ 1405. **Essential Elements and Incidents.** — Assuming that a contract has been completely concluded, and that it belongs to a class capable of being enforced, it must still possess certain essential elements and incidents, in order that a court of equity may exercise the jurisdiction to compel its performance. Some of these elements affect its validity; others its equitable character. It must be upon a valuable consideration.³ It must be reasonably certain as to its subject-matter, its stipulations, its purposes, its parties, and the circumstances under which it was made.⁴ It must be, in general,

¹ These elements, conditions, and incidents, as collected from the cases, are the following: The contract must be concluded, certain, unambiguous, mutual, and upon a valuable consideration; it must be perfectly fair in all its parts; free from any misrepresentation or misapprehension, fraud or mistake, imposition or surprise; not an unconscionable or hard bargain; and its performance not oppressive upon the defendant; and finally, it must be capable of specific execution through a decree of the court.

² [For particular instances of the application of these maxims, see §§ 392, 393, 400, 459.]

³ A seal does not, for this purpose, import a valuable consideration: *Jefferys v. Jefferys*, Craig & P. 138; *Ord*

v. Johnston, 1 Jur., N. S., 1063, 1065; *Houghton v. Lees*, 1 Jur., N. S., 862, 863; *Minturn v. Seymour*, 4 Johns. Ch. 497; *Burling v. King*, 66 Barb. 633; *Butman v. Porter*, 100 Mass. 337; *Vasser v. Vasser*, 23 Miss. 378; *Estate of Webb*, 49 Cal. 541, 545; *Murphy v. Rooney*, 45 Cal. 78; [*ante*, § 1293; *Lamprey v. Lamprey*, 29 Minn. 151; and see *Downs v. Porter*, 54 Tex. 59; *Wilson v. Simpson*, 68 Tex. 309.]

⁴ *Marsh v. Milligan*, 3 Jur., N. S., 979; *Morrison v. Barrow*, 1 De Gex, F. & J. 633; *Taylor v. Portington*, 7 De Gex, M. & G. 328; *Pearce v. Watts*, L. R. 20 Eq. 492; *Tallman v. Franklin*, 14 N. Y. 584; *Stanton v. Miller*, 58 N. Y. 192; *Nichols v. Williams*, 22 N. J. Eq. 63; *Carr v. Passaic etc. Co.*, 22 N. J. Eq. 85; 19 N. J. Eq.

mutual in its obligation and in its remedy.¹ The contract must be free from any fraud, misrepresentation even though not fraudulent, mistake, or illegality.² The

424; *Potts v. Whitehead*, 20 N. J. Eq. 55; *Reese v. Reese*, 41 Md. 554; *Hardesty v. Richardson*, 44 Md. 617; 22 Am. Rep. 57; *Pierce's Heirs v. Catron's Heirs*, 23 Gratt. 588; *Allen v. Webb*, 64 Ill. 342; *Bowman v. Cunningham*, 78 Ill. 48; *Miller v. Campbell*, 52 Ind. 125; *Munsell v. Loree*, 21 Mich. 491; *McClintock v. Laing*, 22 Mich. 212; *Wright v. Wright*, 31 Mich. 380; *Tiernan v. Gibney*, 24 Wis. 190; *Mastin v. Halley*, 61 Mo. 196; *Long v. Duncan*, 10 Kan. 294; *Agard v. Valencia*, 39 Cal. 292; *Odell v. Morin*, 5 Or. 96; *Lynes v. Hayden*, 119 Mass. 482; *Hyde v. Cooper*, 13 Rich. Eq. 250; *McGuire v. Stevens*, 42 Miss. 724; 2 Am. Rep. 649; *Bell v. Bruen*, 1 How. 169; *Hopkins v. Roberts*, 54 Md. 312; *McCornack v. Sage*, 87 Ill. 484. [See also *May v. Thomson*, 20 Ch. Div. 705; *Hennessy v. Woolworth*, 128 U. S. 440; *Crouse v. Frothingham*, 97 N. Y. 105; *Higgins v. Butler*, 78 Me. 520; *Woodruff v. Woodruff*, 44 N. J. Eq. 356; *Anderson v. Brinser*, 129 Pa. St. 376; *Wilks v. Burns*, 60 Md. 64; *Haskin v. Agric. Fire Ins. Co.*, 78 Va. 700; *Blankenship v. Spencer*, 31 W. Va. 510; *Spears v. Long*, 32 S. C. 528; *Patrick v. Sears*, 19 Fla. 856; *Iron Age etc. Co. v. W. U. T. Co.*, 83 Ala. 498; 3 Am. St. Rep. 758; *Watkins v. Turner*, 34 Ark. 663; *Ragsdale v. Mays*, 65 Tex. 255; *Green v. Begole*, 70 Mich. 602; *Wood v. Evans*, 113 Ill. 186; 55 Am. Rep. 409; *Hamilton v. Harvey*, 121 Ill. 469; 2 Am. St. Rep. 118; *Minneapolis etc. R. R. Co. v. Cox*, 76 Iowa, 306; 14 Am. St. Rep. 216; *Isaacs v. Skrainka*, 95 Mo. 517; *Brundige v. Blair*, 43 Kan. 364; *Hollenbeck v. Prior*, 5 Dak. 298; *Ryan v. Davis*, 5 Mont. 505; *Breckinridge v. Crocker*, 78 Cal. 530. See, for limitations on the requisite of completeness in the contract, *Central Trust Co. v. W., St. L., & P. Ry. Co.*, 29 Fed. Rep. 546.]

¹ *Bromley v. Jefferies*, 2 Vern. 415; *Rogers v. Saunders*, 16 Me. 92; 33 Am. Dec. 635; *Duvall v. Myers*, 2 Md. Ch. 401; *Beard v. Linthicum*, 1 Md. Ch. 345; *Reese v. Reese*, 41 Md. 554; *Benedict v. Lynch*, 1 Johns. Ch. 370; 7 Am. Dec. 484; *German v. Machin*, 6

Paige, 288; *Meason v. Kaine*, 63 Pa. St. 335; *Moore's Adm'r v. Fitz Randolph*, 6 Leigh, 175; *Flight v. Bolland*, 4 Russ. 298; *Blanchard v. Detroit etc. R. R.*, 31 Mich. 43; 18 Am. Rep. 142; *Maynard v. Brown*, 41 Mich. 298; *Hopkins v. Roberts*, 54 Md. 312; [*Duff v. Hopkins*, 33 Fed. Rep. 599; *Ballou v. March*, 133 Pa. St. 64; *Chilhowie Iron Co. v. Gardiner*, 79 Va. 305; *Bourget v. Monroe*, 58 Mich. 563; 55 Am. Rep. 687; *Brown v. Munger*, 42 Minn. 482; *Mayger v. Cruse*, 5 Mont. 485; *Sturgis v. Galindo*, 59 Cal. 28; 43 Am. Rep. 239; *Iron Age Publishing Co. v. W. U. T. Co.*, 83 Ala. 498; 3 Am. St. Rep. 758; *Morris v. Fox*, 45 Fed. Rep. 406.] This doctrine is constantly stated by the courts, but there are so many exceptions, especially with respect to the obligation, that the rule is far from universal: See *Green v. Richards*, 23 N. J. Eq. 32, 35. It may be said, however, as a general proposition, that where a contract was intended to bind both the parties, and for any reason one of them is not bound, he cannot compel performance by the other: *Butman v. Porter*, 100 Mass. 337; *Sullings v. Sullings*, 9 Allen, 234. Unilateral contracts, in the form of bonds and the like, are constantly enforced: *Ewins v. Gordon*, 49 N. H. 444; *Jones v. Robbins*, 29 Me. 351; 50 Am. Dec. 593; *Barnard v. Lee*, 97 Mass. 92; *Palmer v. Scott*, 1 Russ. & M. 391. [*Erne v. Houghton*, 6 Col. 318; *Calanchini v. Branstetter*, 84 Cal. 249. Where the plaintiff has already complied with the unenforceable condition, the objection of want of mutuality cannot be made: *Woodruff v. Woodruff*, 44 N. J. Eq. 349; *Wilks v. Georgia Pac. R. R. Co.*, 79 Ala. 180; *Welch v. Whelpley*, 62 Mich. 15; 4 Am. St. Rep. 810. So where the defendant alone has signed the memorandum required by the statute of frauds, the requisite mutuality is supplied by the complainant's filing his bill: *Hodges v. Kowing*, 58 Conn. 12; *Moses v. McClain*, 82 Ala. 370; *Docter v. Hillberg*, 65 Wis. 415; *Mastin v. Grimes*, 88 Mo. 478.]

² The effect of these incidents upon contracts in equity, and upon the remedy of specific performance, has been

elements which peculiarly affect the *equitable* character of the agreement and of the remedy are the following: The contract must be perfectly fair, equal, and just in its terms and in its circumstances.¹ The contract and the situation of the parties must be such that the remedy of specific performance will not be harsh or oppressive.²

discussed in the preceding volume. As to parole evidence of mistake, fraud, or surprise, see vol. 2, §§ 857-859; defense of mistake in suits for specific performance: § 860; proof of mistake on plaintiff's part in same suits: §§ 861-863; effect of statute of frauds on the proof of mistake, fraud, or surprise: §§ 864-867.

As to misrepresentations as a defense, even when not intentional or with knowledge, see vol. 2, § 889; also § 899. Non-disclosure of facts as a defense: § 905; inadequacy of consideration as a defense: §§ 925-928; Ready v. Noakes, 29 N. J. Eq. 497; illegal contracts, in general: §§ 929-936; 937-942.

¹ See *ante*, § 1404; [also § 400.] If, then, the contract itself is unfair, one-sided, unjust, unconscionable, or affected by any other inequitable feature; or if its enforcement would be oppressive or hard on the defendant, or would prevent his enjoyment of his own rights, or would work any injustice; or if the plaintiff has obtained it by sharp and unscrupulous practices, by overreaching, by trickery, by taking undue advantage of his position, by non-disclosure of material facts, or by any other uncounscientious means, — then a specific performance will be refused. It necessarily follows that a *less strong case* is sufficient to *defeat* a suit for a specific performance than is requisite to obtain the remedy: See *Vigers v. Pike*, 8 Clark & F. 562, 645, per Lord Cottenham. See cases in note under § 1404; *Willan v. Willan*, 16 Ves. 72, 83; *Savage v. Brooksopp*, 18 Ves. 335; *Twining v. Morrice*, 2 Brown Ch. 326; *Revell v. Hussey*, 2 Ball & B. 280, 288; *Willard v. Tayloe*, 8 Wall. 557; *Marble Co. v. Ripley*, 10 Wall. 339; *Jackson v. Ashton*, 11 Pet. 229; *McNeil v. Magee*, 5 Mason, 244; *Margraf v. Muir*, 57 N. Y. 155; *Osgood v. Franklin*, 2 Johns. Ch. 1, 23; 7 Am. Dec. 513; *Minturn v. Seymour*, 4 Johns. Ch.

497; *St. John v. Benedict*, 6 Johns. Ch. 111; *Acker v. Phoenix*, 4 Paige, 305; *Howard v. Moore*, 4 Sneed, 317; *Bowman v. Cunningham*, 78 Ill. 48; *Fish v. Leser*, 69 Ill. 394. The remedy will therefore be refused when the performance of the contract would work a breach of trust: *Harnett v. Yielding*, 2 Schoales & L. 548, 553; *White v. Cuddon*, 8 Clark & F. 766; or work injury to third persons: *Thomas v. Dering*, 1 Keen, 729; *Curran v. Holyoke W. Co.*, 116 Mass. 90; [see *Chicago, B., & Q. R. R. Co. v. Reno*, 113 Ill. 39; *Conger v. N. Y., W. S., & B. R. R. Co.*, 120 N. Y. 29;] further examples of the general rule: *Shriver v. Seiss*, 49 Md. 384; *Abbott v. L'Hommiedien*, 10 W. Va. 677; *White v. McGannon*, 29 Gratt. 511; *Shaddle v. Disborough*, 30 N. J. Eq. 370; *Coe v. N. J. Midland R'y*, 31 N. J. Eq. 105; *Tillotson v. Gesner*, 33 N. J. Eq. 313; *Chicago etc. R. R. v. Schoeneman*, 90 Ill. 258; *Tamm v. Lavalley*, 92 Ill. 263; *Foll's Appeal*, 91 Pa. St. 434; 36 Am. Rep. 671; *Brake v. Ballou*, 19 Kan. 397; *Nims v. Vaughn*, 40 Mich. 356; *Fitzpatrick v. Dorland*, 27 Hun, 291; *Schuessler v. Hatchett*, 58 Ala. 181; *Race v. Weston*, 86 Ill. 91; [*Brewster v. Tuthill Spring Co.*, 34 Fed. Rep. 773; *Davis v. Read*, 37 Fed. Rep. 421; *Cowan v. Sapp*, 81 Ala. 525; *McElroy v. Maxwell*, 101 Mo. 294.]

² This rule generally operates in favor of defendants; but may be invoked by a plaintiff when a defendant demands the remedy by counterclaim or cross-complaint. The oppression or hardship may result from unconscionable provisions of the contract itself; or it may result from the situation of the parties, unconnected with the terms of the contract or with the circumstances of its negotiation and execution; that is, from external facts or events or circumstances which control or affect the situation of the de-

The vendor's title must be free from reasonable doubt. In suits by a vendor, the purchaser will not be compelled to complete the contract, unless the title is free from any reasonable doubt.¹ The remaining essential elements and incidents relate more directly to the remedy itself, to the actual performance directed by the decree, and may be briefly stated as follows: The contract must be such that its specific enforcement would not be

fendant: See cases cited *ante*, under § 1404; Gould v. Kemp, 2 Mylne & K. 304, 308; Kimberley v. Jennings, 6 Sim. 340; Willard v. Tayloe, 8 Wall. 557; Marble Co. v. Ripley, 10 Wall. 339; Cathcart v. Robinson, 5 Pet. 263; Tobey v. County of Bristol, 3 Story, 800; Margraf v. Muir, 57 N. Y. 155; Clarke v. Rochester etc. R. R., 18 Barb. 350; Weise's Appeal, 72 Pa. St. 351; Cannaday v. Shepard, 2 Jones Eq. 224; Barnett v. Spratt's Adm'r, 4 Ired. Eq. 171; Stone v. Pratt, 25 Ill. 25; Chicago etc. R. R. v. Schoeneman, 90 Ill. 258; Coe v. N. J. Midland R'y, 31 N. J. Eq. 105. [See also Wood v. Evans, 113 Ill. 186; 55 Am. Rep. 409; Ramsay v. Gheen, 99 N. C. 215; Miles v. D. F. I. Co., 125 N. Y. 294.]

¹ This rule should not be misunderstood. It is wholly distinct from the objection that the vendor has no title at all, or has only a partial or defective one, — an objection which may be raised by *either* of the parties, and which, if *proved*, would either totally defeat a specific performance or render it partial. The rule of the text assumes that the question whether the vendor's title is valid or imperfect is not definitely decided by the court. But if there arises, on the pleadings or from the proofs, a reasonable doubt as to the vendor's title, the court, without deciding the question between the parties then before it, regards the doubt as a sufficient reason for not compelling the purchaser to carry out the contract and accept a conveyance. Where the purchaser is plaintiff, he *may* elect to take a defective and partial title: Pyrke v. Wadlingham, 10 Hare, 1; Radford v. Willis, L. R. 7 Ch. 7; Alexander v. Mills, L. R. 6 Ch. 124; Beioley v. Carter, L. R. 4 Ch. 230; Collier v. McBean, L. R. 1 Ch. 81; Rede v. Oakes, 4 De

Gex, J. & S. 505; Bensel v. Gray, 80 N. Y. 517; Bates v. Delavan, 5 Paige, 299; Seymour v. De Lancey, Hopk. Ch. 436; 14 Am. Dec. 552; Jeffries v. Jeffries, 117 Mass. 184; Sturtevant v. Jaques, 14 Allen, 523; Vreeland v. Blauvelt, 23 N. J. Eq. 483; Dobbs v. Norcross, 24 N. J. Eq. 327; Kostenbader v. Spotts, 80 Pa. St. 430; Pratt v. Eby, 67 Pa. St. 396; Walsh v. Hall, 66 N. C. 233; Allen v. Atkinson, 21 Mich. 351; Powell v. Conant, 33 Mich. 396; Morgan's Heirs v. Morgan, 2 Wheat. 290; Longworth v. Taylor, 1 McLean, 395; Watts v. Waddle, 1 McLean, 200; Jenkins v. Fahey, 73 N. Y. 355; Cornell v. Andrews, 35 N. J. Eq. 7; Mitchell v. Steinmetz, 97 Pa. St. 251; Rader v. Neal, 13 W. Va. 373; Swepson v. Johnston, 84 N. C. 449; Hancock v. Bramlett, 85 N. C. 393; Lyles v. Kirkpatrick, 9 S. C. 265; Chrisman v. Partee, 38 Ark. 31; Hymers v. Branch, 6 Mo. App. 511; Luse v. Deitz, 46 Iowa, 205. [See also Adams v. Valentine, 33 Fed. Rep. 1; Toole v. Toole, 112 N. Y. 333; 8 Am. St. Rep. 750; Moore v. Williams, 115 N. Y. 586; 12 Am. St. Rep. 844; Vought v. Williams, 120 N. Y. 253; 17 Am. St. Rep. 634; Irving v. Campbell, 121 N. Y. 353; Cambrelleng v. Purton, 125 N. Y. 610; Kilpatrick v. Barron, 125 N. Y. 751; Dow v. Whitney, 147 Mass. 1; Noyes v. Johnson, 139 Mass. 436; Holt's Appeal, 98 Pa. St. 257; Murray v. Ellis, 112 Pa. St. 485; Gill v. Wells, 59 Md. 492; Castlebury v. Maynard, 95 N. C. 281; Webb v. Chisholm, 24 S. C. 487; Linn v. McLean, 80 Ala. 360; Estell v. Cole, 62 Tex. 695; Close v. Stuyvesant, 132 Ill. 607; Townshend v. Goodfellow, 40 Minn. 312; 12 Am. St. Rep. 736; Hedderly v. Johnson, 42 Minn. 443; 18 Am. St. Rep. 521; Reynolds v. Borel, 86 Cal. 533.]

nugatory.¹ Although the contract by its terms can be specifically enforced, the defendant must also have the capacity and ability to perform it by obeying the decree of the court.² Finally, the contract must be such that the court is able to make an efficient decree for its spe-

¹ The court will not grant the remedy when by the terms of the contract itself the defendant would be entitled at any time to terminate the agreement and thus evade the decree. Illustrations: Partnership agreements will not, unless in some exceptional cases, be thus enforced: *Scott v. Rayment*, L. R. 7 Eq. 112; *Hercy v. Birch*, 9 Ves. 357; *Sheffield etc. Co. v. Harrison*, 17 Beav. 294; *England v. Curling*, 8 Beav. 129; *Tobey v. Co. of Bristol*, 3 Story, 800; *Buck v. Smith*, 29 Mich. 166; 18 Am. Rep. 84; *Mearson v. Kaine*, 63 Pa. St. 335; *Manning v. Wadsworth*, 4 Md. 59; *Reed v. Vidal*, 5 Rich. Eq. 289; and see *Rust v. Conrad*, 47 Mich. 449; 41 Am. Rep. 720. Nor agreements to submit to arbitration: *Price v. Williams*, cited 6 Ves. 818; *Street v. Rigby*, 6 Ves. 815; *Tobey v. Co. of Bristol*, 3 Story, 800, 820, 823; *Noyes v. Marsh*, 123 Mass. 286; *Conner v. Drake*, 1 Ohio St. 166; *King v. Howard*, 27 Mo. 21.

² *Total inability*.—If at the time of the inability the defendant is totally unable to perform because he has no title at all, or a title completely defective, the remedy will not be granted: [*Williams v. Mansell*, 19 Fla. 546; *Gaines v. Molen*, 41 Ark. 232; *Werden v. Graham*, 107 Ill. 169 (bill brought to compel assignment of interest in a patent shortly before its expiration); *Hurlbut v. Kantzler*, 112 Ill. 482 (to compel assignment of a lease which contained a covenant not to assign without the lessor's consent); *Moses v. McClain*, 82 Ala. 370; *Kennedy v. Hazelton*, 128 U. S. 671 (to compel assignment of a void patent).] Mere pecuniary inability to pay the price is not, however, such an incapacity as the rule assumes. This incapacity must exist at the time of the hearing. The mere fact that the defendant did not own or possess the subject-matter at the time of making the contract does not of itself constitute the legal impossibility, if he acquired it subsequently, at, or before the hearing: *Green v. Smith*, 1

Atk. 572; *Columbine v. Chichester*, 2 Phill. Ch. 27; *Hallett v. Middleton*, 1 Russ. 243; *Greenaway v. Adams*, 12 Ves. 395, 401; *Phillips v. Stauch*, 20 Mich. 369; *Burke v. Seely*, 46 Mo. 334; *Burton v. Shotwell*, 13 Bush, 271. The rule applies even when the inability is caused by the defendant's own wrongful act; as where a vendor, after making the contract and before the suit, conveyed the land to a *bona fide* purchaser for value and without notice. A specific performance would be refused, although the court of equity might grant a decree for damages: *Denton v. Stewart*, 1 Cox, 258; *Greenaway v. Adams*, 12 Ves. 395, 400; *Ferguson v. Wilson*, L. R. 2 Ch. 77; *Smith v. Kelley*, 56 Me. 64; *Little v. Thurston*, 58 Me. 86; *Gupton v. Gup-ton*, 47 Mo. 37; *Warren v. Richmond*, 53 Ill. 52. But if a vendor, after making a contract, should enter into a second agreement to sell the land to B, or should convey it to B, under such circumstances that B is not a *bona fide* purchaser, etc., then the prior vendee can compel a specific performance against the vendor and B: *Snowman v. Harford*, 57 Me. 397; *Fullerton v. McCurdy*, 4 Lans. 132; *Haughwout v. Murphy*, 22 N. J. Eq. 531; 21 N. J. Eq. 118; *Cole v. Cole*, 41 Md. 301; *Bryant v. Booze*, 55 Ga. 438; *Johnson v. Bowden*, 37 Tex. 621; *Bird v. Hall*, 30 Mich. 374; *Youell v. Allen*, 18 Mich. 107; *Gregg v. Hamilton*, 12 Kan. 333; [*Veith v. McMurtry*, 26 Neb. 341; *Lovejoy v. Potter*, 60 Mich. 95.]

Partial incapacity.—Where the defendant's title fails as to a part of the subject-matter, or is partially defective, the plaintiff may elect and be entitled to a specific enforcement of the contract, so far as it can be enforced; and may claim and receive compensation for the deficiency: See cases cited *post*, under § 1407; [see also *Bostwick v. Beach*, 103 N. Y. 414; *Roberts v. Lovejoy*, 60 Tex. 253; *Swain v. Burnett*, 76 Cal. 299; *Burrow v. Scammell*, 19 Ch. Div. 175.]

cific performance, and is able to enforce its own decree when made.¹

§ 1406. Rights under the Contract — Effect of Events without the Agency of the Parties. — The effect of an

¹ Although the contract is valid, and the defendant is able to do what he has undertaken to do, if, through the want of appropriate means and instrumentalities, the court is unable, while pursuing its ordinary modes of administering justice, either to render a decree or to enforce the decree when made, then the remedy will be refused. *Cases where the court cannot render a decree:* The following species of contracts will not be thus enforced: Agreements concerning the manufacture and sale of secret medicines and other secret commodities, where the contract recognizes the secret as not to be disclosed: *Newbery v. James*, 2 Mer. 446; *Williams v. Williams*, 3 Mer. 157. Contracts for the sale or transfer of a good-will, separate from or unconnected with the business and premises of which it is an incident: *Bozon v. Farlow*, 1 Mer. 459; *Baxter v. Conolly*, 1 Jacob & W. 576; *Coslake v. Till*, 1 Russ. 376. But where the good-will is sold and transferred, together with the business and premises, the agreement may be directly enforced, or negatively enforced by an injunction: *Darbey v. Whitaker*, 4 Drew. 134, 139, 140; *Chissum v. Dewes*, 5 Russ. 290; *Whittaker v. Howe*, 3 Beav. 383; and see cases cited in note under § 1344, [also in note under § 934.] *Cases where the court cannot enforce its decree:* This class includes the following species of contracts, for which the equitable remedy is refused. *Continuing covenants:* *Collins v. Plumb*, 16 Ves. 454; *City of London v. Nash*, 3 Atk. 512, 515; *Caswell v. Gibbs*, 33 Mich. 331. Contracts for sale at a price to be fixed by valuers: *Milnes v. Gery*, 14 Ves. 400; *Wilks v. Davis*, 3 Mer. 507; *Collins v. Collins*, 26 Beav. 306; *Vickers v. Vickers*, L. R. 4 Eq. 529; *Richardson v. Smith*, L. R. 5 Ch. 648; *Earl of Darnley v. London etc. R'y*, 3 De Gex, J. & S. 24; L. R. 2 H. L. 43; *Hopkins v. Gilman*, 22 Wis. 476; for limitations of the rule, see *Dinham v. Bradford*, L. R. 5 Ch. 519; *Smith v. Peters*, L. R. 20 Eq. 511; *Jackson v. Jackson*, 1 Smale & G. 184; [Central Trust Co. v. W., St. L., &

P. R'y Co., 29 Fed. Rep. 546; *Coles v. Peck*, 96 Ind. 333; 49 Am. Rep. 161; *Hermann v. Babcock*, 103 Ind. 461.] Contracts for personal services, where the full performance rests upon the personal will of the contracting party: *Palmer v. Scott*, 1 Russ. & M. 391; *Mair v. Himalaya Tea Co.*, L. R. 1 Eq. 411; *Marble Co. v. Ripley*, 10 Wall. 339; *Ford v. Jermon*, 6 Phila. 6; *Cooper v. Pena*, 21 Cal. 403, 411; *Randall v. Latham*, 36 Conn. 48; *Richmond v. Dubuque etc. R. R.*, 33 Iowa, 422; *De Rivafrinoli v. Corsetti*, 4 Paige, 264; 25 Am. Dec. 532; *Hamblyn v. Dinneford*, 2 Edw. Ch. 529; *Haight v. Badgeley*, 15 Barb. 499; [Campbell v. Rust, 85 Va. 653; *Iron Age Pub. Co. v. W. U. T. Co.*, 83 Ala. 498; 3 Am. St. Rep. 458. Contracts for support: *Bumpus v. Bumpus*, 53 Mich. 346; *Bourget v. Monroe*, 58 Mich. 563; 55 Am. Rep. 687; *Ikerd v. Beavers*, 106 Ind. 483; *Deular v. Hile*, 123 Ind. 63.] How far and when such contracts may be negatively enforced by injunction has been considered *ante*, in § 1343. Contracts whose performance would be continuous, and would require protracted supervision and direction; e. g., contracts for building; for construction of works, railroads, and the like; for working mines, quarries, etc.: See *ante*, § 1402, and cases in the note. The English decisions on this subject are very numerous. The following are a few illustrations of American decisions: *Beck v. Allison*, 56 N. Y. 366; 15 Am. Rep. 430; *Mastin v. Halley*, 61 Mo. 196; *Randall v. Latham*, 36 Conn. 48; *Starnes v. Newson*, 1 Tenn. Ch. 239; *Columbia W. Co. v. Columbia*, 5 S. C. 225; *Atlanta etc. R. R. v. Speer*, 32 Ga. 550; 79 Am. Dec. 305; *Cincinnati etc. R. R. v. Washburn*, 25 Ind. 259; *Columbus etc. R. R. v. Watson*, 26 Ind. 50; *Gregory v. Ingwersen*, 32 N. J. Eq. 199; *Danforth v. Philadelphia etc. R'y*, 30 N. J. Eq. 12; *Wharton v. Stoutenburgh*, 35 N. J. Eq. 266; *Roberts v. Kelsey*, 38 Mich. 602. The tendency of the recent cases, especially in England, is to narrow and limit the operation of this rule.

executory contract for the sale of land, in working an equitable conversion, and in clothing the purchaser with an equitable estate in the land, and the vendor with an equitable ownership of the purchase price, has already been described.¹ As soon as the contract is finally *concluded*, although it is wholly executory in form, these rights and estates become fixed and vested. It follows, therefore, that the purchaser, being the equitable owner, is entitled to all the benefits and assumes all the risks of ownership.²

§ 1407. **Performance by Plaintiff a Condition Precedent.**—The doctrine is fundamental that either of the parties seeking a specific performance against the other must show, as a condition precedent to his obtaining the remedy, that he has done or offered to do, or is then ready and willing to do, all the essential and material acts required of him by the agreement at the time of commencing the suit, and also that he is ready and willing to do all such acts as shall be required of him in the specific execution of the contract according to its terms.³

¹ See *ante*, §§ 368, 372, 1161; *Coman v. Lakey*, 80 N. Y. 345, 350; *Pelton v. Westchester F. Ins. Co.*, 77 N. Y. 605, 607.

² From that time he takes the benefit of all *subsequent* improvements, increases, gains, rises in value, and other advantages happening to the property: [*Austin v. Wacks*, 30 Minn. 335.] Conversely, the subject-matter is at his risk, and he must bear all total or partial losses, from fire or other accidental cause, or from trespassers, and all depreciations in value, and other disadvantages; *res perit domino*. This *liability* is, however, subject to the important limitation that the loss or depreciation does not arise from the neglect, default, or unwarrantable delay of the vendor in carrying out the contract: *Paine v. Meller*, 6 Ves. 349; *Cass v. Rudele*, 2 Vern. 280; *Mortimer v. Capper*, 1 Brown Ch. 156; *Jackson v. Lever*, 3 Brown Ch. 605; *Richter v. Selin*, 8 Serg. & R. 425; 440; *Brewer v. Herbert*, 30 Md. 301; 96 Am. Dec. 582; *Robb v. Maun*, 11 Pa. St.

300; 51 Am. Dec. 551; *Andrews v. Bell*, 56 Pa. St. 343; *Lee v. Kirby*, 104 Mass. 420, 428; *Ewing v. Beauchamp*, 6 B. Mon. 422; *Cooper v. Pena*, 21 Cal. 403; *Willard v. Tayloe*, 8 Wall. 558, 571; *Marble Co. v. Ripley*, 10 Wall. 339; *Hale v. Wilkinson*, 21 Gratt. 75; *Ambrose's Heirs v. Keller*, 22 Gratt. 769. Vendor's delay or default: *Wyvill v. Bishop of Exeter*, 1 Price, 292; *Paine v. Meller*, 6 Ves. 349; *Christian v. Cabell*, 22 Gratt. 82; *Griffin's Ex'r v. Cunningham*, 19 Gratt. 571; *Booten v. Schaffer*, 21 Gratt. 474; *Merritt v. Brown*, 19 N. J. Eq. 286; *Kirby v. Harrison*, 2 Ohio St. 326; 59 Am. Dec. 677. [But see *Smith v. Phoenix Ins. Co.*, 91 Cal. 323.]

³ In the language often used, he must show himself "ready, willing, desirous, prompt, and eager." There are two *apparent* exceptions, depending upon strictly equitable considerations: 1. A strict performance at the very stipulated *time* is not always necessary; and 2. Partial and imma-

With respect to the necessity of an actual tender and a demand of performance before suit brought, the Ameri-

terial failures of title or defects of the subject-matter, if admitting of compensation, *may* not prevent the vendor from enforcing the remainder of the agreement: Lloyd v. Collett, 4 Brown Ch. 469; 4 Ves. 690, note; Harrington v. Wheeler, 4 Ves. 686; Guest v. Homfray, 5 Ves. 818; Walker v. Jeffreys, 1 Hare, 341, 352; Southcomb v. Bishop of Exeter, 6 Hare, 213, 218; Dorin v. Harvey, 15 Sim. 49; Sharp v. Wright, 23 Beav. 150; Earl of Darnley v. London etc. R'y, 3 De Gex, J. & S. 24; McMurray v. Spicer, L. R. 5 Eq. 527, 537; Colson v. Thompson, 2 Wheat. 336; Watts v. Waddle, 6 Pet. 339; Boone v. Mo. Iron Co., 17 How. 340; McNeil v. Magee, 5 Mason, 244; Longworth v. Taylor, 1 McLean, 395; Sullings v. Sullings, 9 Allen, 234; Wood v. Perry, 1 Barb. 114; Burling v. King, 66 Barb. 633; Van Campen v. Knight, 63 Barb. 205; Reeves v. Kimball, 40 N. Y. 299; King v. Ruckman, 21 N. J. Eq. 599; Thorp v. Pettit, 16 N. J. Eq. 485; Crane v. Decamp, 21 N. J. Eq. 414; Merritt v. Brown, 21 N. J. Eq. 401; Earl v. Halsey, 14 Pa. St. 332; Buchanan v. Lorman, 3 Gill, 51, 77; McComas v. Easley, 21 Gratt. 23; Vail v. Nelson, 4 Rand. 478; Blackmer v. Phillips, 67 N. C. 340; Seerest v. McKenna, 1 Strob. Eq. 356; Brown v. Hayes, 33 Ga. Supp. 136; Tyler v. McCadle, 9 Smedes & M. 230; Richardson v. Linney, 7 B. Mon. 571; O'Kane v. Kiser, 25 Ind. 168; Allen v. Atkinson, 21 Mich. 351; Rogers v. Taylor, 40 Iowa, 193; Wass v. Muiridge, 123 Mass. 394; Jenkins v. Harrison, 66 Ala. 345; Selleck v. Tallman, 87 N. Y. 106; McHugh v. Wells, 39 Mich. 175; Russell v. Nester, 46 Mich. 290; Ludlum v. Buckingham, 35 N. J. Eq. 71; Kinney v. Redden, 2 Del. Ch. 46; [Williams v. Brisco, 22 Ch. Div. 441; Alexander's Appeal, 118 Pa. St. 610; Carswell v. Walsh, 70 Md. 504; Vanscoy v. Stinchcomb, 29 W. Va. 253; Allen v. Taylor, 96 N. C. 37; Haggerty v. Elyton Land Co., 89 Ala. 428; Chicago Mun. Gas Light Co. v. Town of Lake, 130 Ill. 42; Mayger v. Cruse, 5 Mont. 485.]

Vendor's failure of title. — It is therefore a familiar rule that the ven-

dor cannot force performance upon the purchaser, unless he is able to give a good title to the subject-matter: King v. Knapp, 59 N. Y. 462; Hepburn v. Auld, 5 Cranch. 262; Hoover v. Calhoun, 16 Gratt. 109; Jackson v. Ligon, 3 Leigh, 160; Bryan v. Read, 1 Dev. & B. Eq. 78; Cunningham v. Sharp, 11 Humph. 116, 121; Jeffries v. Jeffries, 117 Mass. 184; Dobbs v. Norcross, 24 N. J. Eq. 327; Vreeland v. Blauvelt, 23 N. J. Eq. 483; Cornell v. Andrews, 35 N. J. Eq. 7; Jenkins v. Fahey, 73 N. Y. 355; Bensel v. Gray, 80 N. Y. 517; Swepson v. Johnston, 84 N. C. 449; Hancock v. Bramlett, 85 N. C. 393; Lyles v. Kirkpatrick, 9 S. C. 265; Rader v. Neal, 13 W. Va. 373; Hymers v. Branch, 6 Mo. App. 511; Chrisman v. Partee, 38 Ark. 31; Mitchell v. Steinmetz, 97 Pa. St. 251. [That it is not generally necessary that the vendor be able to furnish a good title at the time of the contract, if he be able to do so at the time of the suit, time not being of the essence, see Dodson v. Hays, 29 W. Va. 577; Munford v. Pearce, 70 Ala. 452; McKinney v. Jones, 55 Wis. 39. For cases where the vendee may be compelled to accept a defective title, see Fortune v. Watkins, 94 N. C. 304; Lawrie v. Lees, 7 App. Cas. (H. L.) 19 (where the contract has fixed a method of ascertaining whether the title is good, and it is good as judged by that method).]

His partial defect or failure. — But where the defect or failure is partial and immaterial, so that he can give substantially what he contracted to give, the court may grant the remedy, with compensation to the purchaser; Halsey v. Grant, 13 Ves. 73, 77; Guest v. Homfray, 5 Ves. 818; Mortlock v. Buller, 10 Ves. 292, 306; McQueen v. Farquhar, 11 Ves. 467; Foley v. Crow, 37 Md. 51; [Towner v. Tickner, 112 Ill. 217; In re Fawcett, 42 Ch. Div. 156; *ante*, § 1403, note;] but the defect or failure must be *immaterial*: Peers v. Lambert, 7 Beav. 546; Howard v. Kimball, 65 N. C. 175; 6 Am. Rep. 739; Griffin's Ex'r v. Cunningham, 19 Gratt. 571; Smith v. Turner, 50 Ind. 367; Havens v. Bliss, 26 N. J. Eq. 363; Gregory v. Perkins

can decisions are somewhat conflicting, and different rules seem to prevail in different states. The most important of these rules are given in the foot-note.

40 Iowa, 82; Walsh v. Barton, 24 Ohio St. 28; Bogan v. Daughdrill, 51 Ala. 312. [See Wetmore v. Bruce, 117 N. Y. 320; 118 N. Y. 319; City of Tiffin v. Shawhan, 43 Ohio St. 178.]

Tender, when necessary. — In general, the rules of equity concerning the necessity of an *actual* tender are not so stringent as those of the law. The following special rules seem to be settled: 1. An actual tender by the plaintiff is unnecessary when, from the acts of the defendant or from the situation of the property it would be wholly nugatory. Thus if defendant has openly refused to perform, the plaintiff need not make a tender or demand; it is enough that he is ready and willing, and offers to perform in his pleading: Hunter v. Daniel, 4 Hare, 420, 433; Mattocks v. Young, 66 Me. 459, 467; Crary v. Smith, 2 N. Y. 60, 65; Kerr v. Purdy, 50 Barb. 24; Maxwell v. Pittenger, 3 N. J. Eq. 156; White v. Dobson, 17 Gratt. 262; Brock v. Hidy, 13 Ohio St. 306, 310; Brown v. Eaton, 21 Minn. 409, 411; Gill v. Newell, 13 Minn. 462, 472; Deichmann v. Deichmann, 49 Mo. 107; Gray v. Dougherty, 25 Cal. 266, 280, 281. [See also Eberly v. Lehman, 110 Pa. St. 542; Orne v. Kittanning Coal Co., 114 Pa. St. 172; Wilbourn v. Bishop, 62 Miss. 341; Lyman v. Gedney, 114 Ill. 388; 55 Am. Rep. 871; Dulin v. Prince, 124 Ill. 76; Baumann v. Pinckney, 118 N. Y. 604, 616.] Also, if at the time fixed the vendor is unable to convey, by reason of a defect in his title, etc.: Karker v. Haverly, 50 Barb. 79; Delavan v. Duncan, 49 N. Y. 485, 487; Hall v. Whittier, 10 R. I. 530; Young v. Daniels, 2 Iowa, 126; 63 Am. Dec. 477; Gray v. Dougherty, 25 Cal. 266, 280; unless time was made essential: Kimball v. Tooke, 70 Ill. 553. 2. Where the stipulations are mutual and dependent, — that is, where the deed is to be delivered upon payment of the price, — an actual tender and demand by one party is necessary to put the other in default, and to cut off *his* right to treat the contract as still subsisting: Hubbell v. Von Schoening, 49 N. Y. 326, 331; Laird v. Smith, 44 N. Y. 618;

Van Campen v. Knight, 63 Barb. 205; Irvin v. Bleakley, 67 Pa. St. 24, 28; Crabtree v. Levings, 53 Ill. 526. 3.

Time essential: Where the time of payment by the vendee is made *essential*, and *a fortiori* where, if his payments are not made on the exact day named, the vendor may treat the contract as at an end, the vendee must make an actual tender of the price and a demand of the deed at a specified time. The same is true of the vendor when the time of conveying is made *essential*. This is the very meaning of time being of the essence of the contract: Duffy v. O'Donovan, 46 N. Y. 223; Gale v. Archer, 42 Barb. 320; Wells v. Smith, 2 Edw. Ch. 78; Kimball v. Tooke, 70 Ill. 553; Phelps v. Illinois Cent. R. R., 63 Ill. 468; Heuer v. Rutkowski, 18 Mo. 216; [Carter v. Phillips, 144 Mass. 100;] but the necessity may be waived by conduct of the other party: Duffy v. O'Donovan; Kimball v. Tooke, *supra*; Tobey v. Foreman, 79 Ill. 489. *Time not essential:* Concerning the necessity of actual tender in contracts in which time is not essential, the American decisions are directly conflicting. According to one group of cases, the strict legal rule is enforced. Where the stipulations are mutually dependent, the plaintiff must make an actual tender, and must demand performance before bringing his suit. Some of these cases, however, dispense with the demand, and only require a tender. *Suits by the vendee:* Klyce v. Broyles, 37 Miss. 524; Mhoon v. Wilkerson, 47 Miss. 633; Gray v. Dougherty, 25 Cal. 266, 278, 282; Jones v. Petaluma, 36 Cal. 230, 232; Marshall v. Caldwell, 41 Cal. 611, 615; Duff v. Fisher, 15 Cal. 375, 381; Mather v. Scoles, 35 Ind. 1; Fall v. Hazelrigg, 45 Ind. 576; 15 Am. Rep. 278; Lynch v. Jennings, 43 Ind. 276, 286; Hart v. McClellan, 41 Ala. 251; Bell v. Thompson, 34 Ala. 633; Deichmann v. Deichmann, 49 Mo. 107; Brock v. Hidy, 13 Ohio St. 306, 310; Rogers v. Taylor, 40 Iowa, 193; Bearden v. Wood, 1 A. K. Marsh. 450; Hall v. Whittier, 10 R. I. 530. *Suits by vendor:* Klyce v. Broyles, 37 Miss. 524; Ex

§ 1408. Time as Affecting the Right to a Performance.

— The stipulations concerning time of performance in a contract are regarded by equity either as immaterial, or as essential, or as material. In all ordinary cases of contract, equity does not regard time as of the essence of the agreement. In all ordinary cases of contract for the sale of land, if there is nothing special in its objects, subject-matter, or terms, although a certain period of time is stipulated for its completion, or for the execution of any of its terms, equity treats the provision as formal rather than essential, and permits a party who has suffered the period to elapse to perform such acts after the prescribed date, and to compel a performance by the other party notwithstanding his own delay.¹ *Time essential:* Time

parte Hodges, 24 Ark. 197; Corbas v. Teed, 69 Ill. 205; and see Thomson v. Smith, 63 N. Y. 301. Another group of decisions adopts a rule more in accordance with the principles of equity, viz., that in such contracts an actual tender or demand by the plaintiff prior to the suit is not essential. It is enough that he was ready and willing, and offered, at the time specified, and even that he is ready and willing at the time of bringing the suit, unless his rights have been lost by laches, and that he offers to perform in his pleading. The plaintiff's performance will be provided for in the decree, and his previous neglect will only affect his right to costs. *Suits by vendee:* Irvin v. Gregory, 13 Gray, 215, 218; Park v. Johnson, 4 Allen, 259; Stevenson v. Maxwell, 2 N. Y. 408, 415; Bruce v. Tilson, 25 N. Y. 194, 197, 203 (see comments of Allen, J., upon Wells v. Smith, 2 Edw. Ch. 78; 7 Paige, 22; 31 Am. Dec. 274; confining it to contracts in which time is made essential); Freeson v. Bissell, 63 N. Y. 168, 170; Chess's Appeal, 4 Pa. St. 52; 45 Am. Dec. 668; Smoot v. Rea, 19 Md. 398, 410; Maughlin v. Perry, 35 Md. 352; Morris v. Hoyt, 11 Mich. 9, 18; Seeley v. Howard, 13 Wis. 336; St. Paul Division etc. v. Brown, 9 Minn. 157. *Suits by vendor:* Stevenson v. Maxwell, Bruce v. Tilson, Freeson v. Bissell, *supra*; Hawk v. Greensweig, 2 Pa. St.

295; Winton v. Sherman, 20 Iowa, 295; Seeley v. Howard, 13 Wis. 336; Woodson's Adm'rs v. Scott, 1 Dana, 470. This is unquestionably the true equitable doctrine. For further illustrations, see Wass v. Mungridge, 128 Mass. 394; Selleck v. Tallman, 87 N. Y. 106; Jenkins v. Harrison, 66 Ala. 345; McHugh v. Wells, 39 Mich. 175; [Atkinson v. Hudson, 44 Ark. 192, 197, 200.]

¹ This general doctrine is established by an unbroken line of decisions; but it is subject to various exceptions and limitations, one of the most important being that the delay must not be willful and intentional, and must not have worked any harm to the other party. My limits do not permit me to enter upon a full discussion of these questions; for their solution the reader must be referred to special works on this subject: Seton v. Slade, 7 Ves. 265, per Lord Eldon; Decamp v. Feay, 5 Serg. & R. 323; 9 Am. Dec. 372; per Gibson, J.; Vyse v. Foster, L. R. 7 H. L. 318; McMurray v. Spicer, L. R. 5 Eq. 527; Tilley v. Thomas, L. R. 3 Ch. 61, 67, 69; Parkin v. Thorold, 2 Sim., N. S., 1; 16 Beav. 59; Hull v. Sturdivant, 46 Me. 34; Dresel v. Jordan, 104 Mass. 407; Quinn v. Roath, 37 Conn. 16; Edgerton v. Peckham, 11 Paige, 352; Hubbell v. Von Schoening, 49 N. Y. 326; Van Campen v. Knight, 63 Barb. 205; Sharp v. Trimmer, 24 N. J. Eq. 422; King v. Ruckman,

may be essential. It is so whenever the intention of the parties is clear that the performance of its terms shall be accomplished exactly at the stipulated day. The intention must then govern. A delay cannot be excused. A performance at the time is essential; any default will defeat the right to a specific enforcement.¹ *Time material:*

20 N. J. Eq. 316; Smoot v. Rea, 19 Md. 399; Scarlett v. Stein, 40 Md. 512; Brock v. Hidy, 13 Ohio St. 305; Keller v. Fisher, 7 Ind. 718; Shafer v. Niver, 9 Mich. 253; Snyder v. Spaulding, 57 Ill. 489; Spalding v. Alexander, 6 Bush, 160; Walton v. Wilson, 30 Miss. 576; Morgan v. Bergen, 3 Neb. 209; Prince v. Griffin, 27 Iowa, 514; Knott v. Stephens, 5 Or. 235; Steele v. Branch, 40 Cal. 3; [Day v. Hunt, 112 N. Y. 191; Dynan v. McCulloch, 46 N. J. Eq. 14; Sylvester v. Born, 132 Pa. St. 467; Smith's Ex'r v. Profit's Adm'r, 82 Va. 832; Maltby v. Austin, 65 Wis. 527; Van Vranken v. R. R. Co., 55 Iowa, 135; Austin v. Wacks, 30 Minn. 335. Non-performance induced by conduct of the defendant: Cheney v. Libby, 134 U. S. 78.] A delay in payment at the day appointed, unless intentional and willful, or unreasonably long, will not preclude the vendee from enforcing the contract. Of course, the delay must be explained and accounted for, and it must not be prejudicial to the other party beyond the means of reparation: See Longworth v. Taylor, 1 McLean, 395; 14 Pet. 172, per Story, J., and cases cited; Moote v. Scriven, 33 Mich. 500; Brassell v. McLemore, 50 Ala. 476; Sharp v. Trimmer, 24 N. J. Eq. 422; Pritchard v. Todd, 38 Conn. 413; Converse v. Blumrich, 14 Mich. 109, 114; 90 Am. Dec. 230; Shortall v. Mitchell, 57 Ill. 161; Decamp v. Feay, 5 Serg. & R. 323, 327; 9 Am. Dec. 372; Edgerton v. Peckham, 11 Paige, 352, 359; McClartey v. Gokey, 31 Iowa, 505; [Ballard v. Ballard, 25 W. Va. 470]; and see further, in this connection, Grey v. Tubbs, 43 Cal. 359; Snider v. Lehnherr, 5 Or. 385; Peck v. Brighton Co., 69 Ill. 200; Beach v. Dyer, 93 Ill. 295; Tilton v. Stein, 87 Ill. 122; Jones v. Jones, 11 Phila. 559; Russell v. Baughman, 94 Pa. St. 400; Parsons v. Gilbert, 45 Iowa, 33; Chadwell v. Winston, 3 Tenn. Ch. 110; Henderson v. Hicks, 58 Cal. 364; Burton v. Ad-

kins, 2 Del. Ch. 125; Davison v. Jersey Co. Ass'n, 71 N. Y. 333; Wonson v. Fenno, 129 Mass. 405.

¹ Hipwell v. Knight, 1 Younge & C. 401; Quinn v. Roath, 37 Conn. 16; Miller's Adm'r v. Miller, 25 N. J. Eq. 354; King v. Ruckman, 20 N. J. Eq. 316; Prince v. Griffin, 27 Iowa, 514; Knott v. Stephens, 5 Or. 235; Grey v. Tubbs, 43 Cal. 359. Time may become essential from the subject-matter, or object of the contract; e. g., where the value of the subject-matter necessarily fluctuates and changes with the mere lapse of time: Hipwell v. Knight, 1 Younge & C. 401, 416; Dololet v. Rothschild, 1 Sim. & St. 590 (stocks); see McKay v. Carrington, 1 McLean, 50; Holt v. Rogers, 8 Pet. 420; Brashier v. Gratz, 6 Wheat. 528; Hepburn v. Auld, 5 Cranch, 262; Jennisons v. Leonard, 21 Wall. 302; Jones v. Robbins, 29 Me. 351; 50 Am. Dec. 593; Goldsmith v. Guild, 10 Allen, 239; Hoyt v. Tuxbury, 70 Ill. 331; [Carter v. Phillips, 144 Mass. 100; Wilson v. Roots, 119 Ill. 379.] Also in unilateral contracts: Brooke v. Garrod, 3 Kay & J. 608; 2 De Gex & J. 62; Austin v. Tawney, L. R. 2 Ch. 143; Kerr v. Purdy, 51 N. Y. 629; 50 Barb. 24; Karker v. Haverly, 50 Barb. 79; Potts v. Whitehead, 20 N. J. Eq. 55; Fessler's Appeal, 75 Pa. St. 483; Maughlin v. Perry, 35 Md. 352, 360; White v. Dobson, 17 Gratt. 262; Jones v. Noble, 3 Bush, 694; Mason v. Payne, 47 Mo. 517; Estes v. Furlong, 59 Ill. 298, 300; [Stembridge v. Stembridge, 87 Ky. 91; Harding v. Gibbs, 125 Ill. 85; 8 Am. St. Rep. 345.] Time may be made essential by express stipulation. No particular form is necessary, but any clause will have the effect which clearly provides that the contract is to be null, if the fulfillment is not within the prescribed time: Hudson v. Bartram, 3 Madd. 440; Benedict v. Lynch, 1 Johns. Ch. 370; 7 Am. Dec. 484; Wells v. Smith, 2 Edw. Ch. 78; 7 Paige, 22; 31 Am. Dec. 274; Barnard

Although time is not ordinarily essential, yet it is, as a general rule, material. In order that a default may not defeat a party's remedy, the delay which occasioned it must be explained and accounted for. The doctrine is fundamental that a party seeking the remedy of specific performance, and also the party who desires to maintain an objection founded upon the other's laches, must show himself to have been "ready, desirous, prompt, and eager."¹

§ 1409. **Enforcement of Verbal Contracts Part Performed.**—The doctrine was settled at an early day in England, and has been fully adopted in nearly all the American states, that a verbal contract for the sale or leasing of land, or for a settlement made upon considera-

v. Lee, 97 Mass. 92; Goldsmith v. Guild, 10 Allen, 239; Quinn v. Roath, 37 Conn. 16; Baldwin v. Van Vorst, 9 N. J. Eq. 577; Bullock v. Adams's Ex'rs, 20 N. J. Eq. 367, 371; Reed v. Breeden, 61 Pa. St. 460; Jackson v. Ligon, 3 Leigh, 160, 187; Kirby v. Harrison, 2 Ohio St. 326, 332; 59 Am. Dec. 677; Scott v. Fields, 7 Ohio, 424; Phelps v. Ill. Cent. R. R., 63 Ill. 468; Peck v. Brighton Co., 69 Ill. 200; Kimball v. Tooke, 70 Ill. 553; Davis v. Stevens, 3 Iowa, 158; O'Fallon v. Kennerly, 45 Mo. 124; Morgan v. Bergen, 3 Neb. 209; Snider v. Lehnherr, 5 Or. 385; Grey v. Tubbs, 43 Cal. 359; [Sowles v. Hall, 62 Vt. 247; 22 Am. St. Rep. 101; Cleary v. Folger, 84 Cal. 316; 13 Am. St. Rep. 187; Coleman v. Applegarth, 68 Md. 21; 6 Am. St. Rep. 417. For waiver of such conditions, see Dana v. St. Paul Investment Co., 42 Minn. 194; Paulman v. Cheney, 18 Neb. 392; Ballard v. Cheney, 19 Neb. 58.] Time may also be made essential, where one of the parties delays in fulfilling, and the other party by a notice prescribes a period within which the contract must be completed, or else be abandoned: Reynolds v. Nelson, 6 Madd. 18; Eads v. Williams, 4 De Gex, M. & G. 674; Rogers v. Saunders, 16 Me. 92; 33 Am. Dec. 635; Wiswall v. McGowan, Hoff. Ch. 125; Thompson v. Dulles, 5 Rich. Eq. 370; Smith v. Lawrence, 15 Mich. 499; Reed v. Breeden, 61 Pa. St. 460. [See also Bat-

tell v. Matot, 58 Vt. 271. But such notice must be reasonable in its terms: See Austin v. Wacks, 30 Minn. 335.]

¹The following are a few out of the great number of cases illustrating this doctrine: Lloyd v. Collett, 4 Brown Ch. 469; Alley v. Deschamps, 13 Ves. 225; McMurray v. Spicer, L. R. 5 Eq. 527, 537; Hubbell v. Von Schoening, 58 Barb. 498; 49 N. Y. 326; Eppinger v. McGreal, 31 Tex. 147; Campbell v. Hicks, 19 Ohio St. 433; Mix v. Balduc, 78 Ill. 215; Peck v. Brighton Co., 69 Ill. 200; McDermid v. McGregor, 21 Minn. 111; Ritson v. Dodge, 33 Mich. 463; Delavan v. Duncan, 49 N. Y. 485; Finch v. Parker, 49 N. Y. 1; Hawley v. Jelly, 25 Mich. 94; McLaurie v. Barnes, 72 Ill. 73; Roby v. Cossitt, 78 Ill. 638; Green v. Covillaud, 10 Cal. 317; 70 Am. Dec. 725; Steele v. Branch, 40 Cal. 3; Williams v. Hart, 116 Mass. 513; Boyd v. Schlesinger, 59 N. Y. 301, 305; Davison v. Jersey Co. Ass'n, 6 Hun, 470; 71 N. Y. 333; Ludlum v. Buckingham, 35 N. J. Eq. 71; Kinney v. Redden, 2 Del. Ch. 46; Russell v. Nester, 46 Mich. 290; Beach v. Dyer, 93 Ill. 295; Tilton v. Stein, 87 Ill. 122; Parsons v. Gilbert, 45 Iowa, 33; Chadwell v. Winston, 3 Tenn. Ch. 110; Henderson v. Hicks, 58 Cal. 364; Burton v. Adkins, 2 Del. Ch. 125; Wonson v. Fenn, 129 Mass. 405; Russell v. Baughman, 94 Pa. St. 400; Jones v. Jones, 11 Phila. 559; [Stewart v. Allen, 47 Fed. Rep. 399.]

tion of marriage, if part performed by the party seeking the remedy, may be specifically enforced by courts of equity, notwithstanding the statute of frauds.¹ The

¹ The contract must possess all the elements and features necessary to the specific enforcement of any agreement, except the written memorandum required by the statute. My limits only permit me to state the most general rules on this subject. Out of the vast number of decisions, I shall cite only a comparatively few, by way of illustration: *Lester v. Foxcroft*, Colles, 108; cited 2 Vern. 456; 1 Lead. Cas. Eq., 4th Am. ed., 1027, 1038, 1042; *Clinan v. Cooke*, 1 Schoales & L. 22; *Newton v. Swazey*, 8 N. H. 9; *Tilton v. Tilton*, 9 N. H. 385; *Eaton v. Whitaker*, 18 Conn. 222; 44 Am. Dec. 586; *Hall v. Whittier*, 10 R. I. 530; *Freeman v. Freeman*, 43 N. Y. 34; 3 Am. Rep. 657; *Welsh v. Bayaud*, 21 N. J. Eq. 186; *Greenlee v. Greenlee*, 22 Pa. St. 225; *Cole v. Cole*, 41 Md. 301; *Semmes v. Worthington*, 38 Md. 298; *Pierce's Heirs v. Catron's Heirs*, 23 Gratt. 483; *Lowry v. Buffington*, 6 W. Va. 249; *Church of the Advent v. Farrow*, 7 Rich. Eq. 378; *Ford v. Finney*, 35 Ga. 258; *Johnson v. Bowden*, 37 Tex. 621; *Farrar v. Patton*, 20 Mo. 81; *Feusier v. Sneath*, 3 Nev. 120; *Morgan v. Bergen*, 3 Neb. 209; *Gregg v. Hamilton*, 12 Kan. 333; *Northrop v. Boone*, 66 Ill. 368; *Fall v. Hazelrigg*, 45 Ind. 576; 15 Am. Rep. 278; *Grant v. Ramsey*, 7 Ohio St. 157; *Armes v. Bigelow*, 3 McAr. 442; *Hiatt v. Williams*, 72 Mo. 214; 37 Am. Rep. 438; *Bohanan v. Bohanan*, 96 Ill. 591; *McDowell v. Lucas*, 97 Ill. 489; *Jefferson v. Jefferson*, 96 Ill. 551; *Marshall v. Peck*, 91 Ill. 187; *Laird v. Allen*, 82 Ill. 43; *Wallace v. Rappleye*, 103 Ill. 229; *Littlefield v. Littlefield*, 51 Wis. 23; *Seaman v. Aschermann*, 51 Wis. 678; 37 Am. Rep. 849; *Manly v. Howlett*, 55 Cal. 94; *Hanlon v. Wilson*, 10 Neb. 138; *Hibbert v. Aylott*, 52 Tex. 530; *Judy v. Gilbert*, 77 Ind. 96; 40 Am. Rep. 289; *Lamb v. Hinman*, 46 Mich. 112; *Jamison v. Dimock*, 95 Pa. St. 52; *Newkumet v. Kraft*, 10 Phila. 127; *Wharton v. Stoutenburgh*, 35 N. J. Eq. 266; *Sherman v. Scott*, 27 Hun, 331; *Barnes v. Boston etc. R.*, 130 Mass. 388. [See also *Union Pac. R'y Co. v. McAlpine*, 129 U. S. 307; *Winchell v. Winchell*, 100 N. Y.

163; *Douglass v. Snow*, 77 Me. 95; *Young v. Young*, 45 N. J. Eq. 34; *Schuey v. Schaeffer*, 130 Pa. St. 18; *Barrett v. Forney*, 82 Va. 269; *Gallagher v. Gallagher*, 31 W. Va. 9; *Hunt v. Hayt*, 10 Col. 278; *Wagonblast v. Whitney*, 12 Or. 83; *Day v. Cohn*, 65 Cal. 508.] In a very few states the remedy seems to be either wholly denied, or else admitted only under very special circumstances: North Carolina, Tennessee, Kentucky: [See *Holmes v. Holmes*, 86 N. C. 205; *White v. Bannon*, 86 Ky. 93; and in Mississippi, *Niles v. Davis*, 60 Miss. 750;] while in Massachusetts and Maine, it did not exist until the very recent legislation: [See §§ 314, 326.]

Fundamental ground of the jurisdiction. — The ground is equitable fraud; not an antecedent fraud in entering into the contract, but a fraud inhering in the consequence of setting up the statute as a defense. If the defendant knowingly permits the plaintiff to do acts in part performance of the verbal agreement, acts done in reliance on the agreement, which change the relations of the parties and prevent a restoration to their former condition, it would be a virtual fraud for the defendant to interpose the statute as a defense, and thus to secure for himself the benefit of the acts of part performance, while the plaintiff would be left not only without adequate remedy at law, but also liable for damages as a trespasser: See vol. 2, §§ 864-867, 921, where this principle is discussed. See also *Lester v. Foxcroft*, *supra*; *McCormick v. Grehan*, L. R. 4 H. L. 82, 97; *Haigh v. Kaye*, L. R. 7 Ch. 469; *Caton v. Caton*, L. R. 1 Ch. 137, 147; *Bond v. Hopkins*, 1 Schoales & L. 413, 433; *Clinan v. Cooke*, 1 Schoales & L. 22, 41; *Mundy v. Jolliffe*, 5 Mylne & C. 167, 177; *Parkhurst v. Van Cortlandt*, 1 Johns. Ch. 273; *Wright v. Pucket*, 22 Gratt. 370, 374; *Pierce's Heirs v. Catron's Heirs*, 23 Gratt. 588; *Semmes v. Worthington*, 38 Md. 298; *Horn v. Ludington*, 32 Wis. 73; *Morgan v. Bergen*, 3 Neb. 209; and cases cited above, in this note. [See also *Maddison v. Alderson*, L. R. 8 App. Cas. (H. L.)

ground upon which the remedy in such cases rests is that of equitable fraud. It would be a virtual fraud for the

467, 476; *Woodbury v. Gardner*, 77 Me. 68; *Burns v. Fox*, 113 Ind. 205; *Popp v. Swanke*, 68 Wis. 364; *Slingerland v. Slingerland*, 39 Minn. 197.] It follows from this principle that the acts of part performance must be done by the party seeking to enforce the contract; and must be done in pursuance of the contract, and with the design of carrying the same into execution; and must be done with the consent, express or implied, or knowledge, of the other party: *Id.* [See *Linn v. McLean*, 85 Ala. 250; *Haines v. McGlone*, 44 Ark. 79; *Fairfield v. Barbour*, 51 Mich. 57; *Morrison v. Herrick*, 130 Ill. 631; *Recknagle v. Schmaltz*, 72 Iowa, 63; *Hollenbeck v. Prior*, 5 Dak. 298; *Ducie v. Ford*, 135 U. S. 587; *Nibert v. Baghurst*, 47 N. J. Eq. 201. On the ground of preventing fraud, a parol gift of land made to a near relative, and followed by possession and valuable improvements on the part of the donee, will generally be enforced: See *Pomeroy on Specific Performance of Contracts*, secs. 130, 131; *Seavey v. Drake*, 62 N. H. 393; *Allison v. Burns*, 107 Pa. St. 50; *Erie etc. R'y Co. v. Knowles*, 117 Pa. St. 77; *Halsey v. Peters's Ex'r*, 79 Va. 60; *Hunter v. Mills*, 29 S. C. 72; *Beall v. Clark*, 71 Ga. 818; *Irwin v. Dyke*, 114 Ill. 302; *Anderson v. Scott*, 94 Mo. 643; *West v. Bundy*, 78 Mo. 407; *Newkirk v. Marshall*, 35 Kan. 77; *Dawson v. McFaddin*, 22 Neb. 131; *Story v. Black*, 5 Mont. 26; 51 Am. Rep. 37; *Manly v. Howlett*, 55 Cal. 94. Taking possession is not sufficient: *Anderson v. Scott*, 94 Mo. 637. The acts done must be referable exclusively to the gift: *Truman v. Truman*, 79 Iowa, 506; and see *Pond v. Sheehan*, 132 Ill. 312. In *Kaufman v. Cook*, 114 Ill. 11, an after-acquired title of the donor was held not to inure to the benefit of the donee. The improvements must be of considerable value: *Eason v. Eason*, 61 Tex. 225.

In certain states, parol licenses are enforced, where there has been large expenditure by the licensee: See *Pomeroy on Specific Performance*, sec. 132; *Olmstead v. Abbott*, 61 Vt. 281. But the doctrine of part performance applies only to contracts relating to land: *McElroy v. Ludlum*, 32 N. J.

Eq. 828; *Osborne v. Kimball*, 41 Kan. 187; *Wallace v. Scoggins*, 17 Or. 476 (lease). Or to agreements in consideration of marriage: *Pomeroy on Specific Performance*, sec. 101.]

Acts of part performance.—The following acts do not constitute a part performance within the doctrine: Acts done prior to the contract; acts merely preparatory or ancillary to the agreement, such as delivering abstract of title, measuring the land, drawing up deeds, etc.: [*Lydick v. Holland*, 83 Mo. 703; *Nibert v. Baghurst*, 47 N. J. Eq. 201.] marriage alone: [*Peck v. Peck*, 77 Cal. 106; 11 Am. St. Rep. 244; *McAnnulty v. McAnnulty*, 120 Ill. 26; 60 Am. Rep. 552; *Welch v. Whelpley*, 62 Mich. 15; 4 Am. St. Rep. 810; *Adams v. Adams*, 17 Or. 247;] payment of the price in whole or in part (otherwise in Iowa, by statute): [*Townsend v. Fenton*, 30 Minn. 523; 32 Minn. 482; *Baker v. Wiswell*, 17 Neb. 52; *Forrester v. Flores*, 64 Cal. 24; *Nibert v. Baghurst*, 47 N. J. Eq. 201. See also *Maddison v. Alderson*, 8 App. Cas. (H. L.) 467, 479, 480.] The important acts which do constitute a sufficient part performance are actual, open possession of the land; or permanent and valuable improvements made on the land; or these two combined. In addition to the cases cited at the commencement of this note, see *Possession*: *Pain v. Coombs*, 1 De Gex & J. 34; *Shillibeer v. Jarvis*, 8 De Gex, M. & G. 79; *Coles v. Pilkington*, L. R. 19 Eq. 174; *Clinan v. Cooke*, 1 Schoales & L. 22; *Gregory v. Mighell*, 18 Ves. 328; *Tilton v. Tilton*, 9 N. H. 335, 390; *Malins v. Brown*, 4 N. Y. 403; *Reed v. Reed*, 12 Pa. St. 117; *Danforth v. Laney*, 28 Ala. 274; *Catlett v. Bacon*, 33 Miss. 269; *White v. Watkins*, 23 Mo. 423; *Anderson v. Simpson*, 21 Iowa, 399; [*Taylor v. Millard*, 118 N. Y. 244; *Holmes v. Caden*, 57 Vt. 111; *Heflin v. Milton*, 69 Ala. 354; *McLure v. Tenville*, 89 Ala. 572; *Murphy v. Stever*, 47 Mich. 522.] *Improvements*: *Wills v. Stradling*, 3 Ves. 378; *Stockley v. Stockley*, 1 Ves. & B. 23; *Mundy v. Jolliffe*, 5 Mylne & C. 167; *Surcome v. Penniger*, 3 De Gex, M. & G. 571; *Crook v. Corpor. of Seaford*, L. R. 6 Ch. 551; 10 Eq. 678; *Williams v. Evans*,

defendant, after permitting the acts of part performance, to interpose the statute as a bar to the plaintiff's remedial right. The acts of part performance, therefore, in order to satisfy this principle, must be done in pursuance of the contract, and must alter the relations of the parties. The most important acts which constitute a sufficient part performance are actual possession, permanent and valuable improvements, and these two combined.

§ 1410. Damages in Place of a Specific Performance.

—When the impossibility of a specific performance is disclosed at the hearing, and the suit was brought by the plaintiff in ignorance of such fact, the court will award the remedy of damages.¹

L. R. 19 Eq. 547; *Miller v. Tobie*, 41 N. H. 84; *Potter v. Jacobs*, 111 Mass. 32; *Freeman v. Freeman*, 43 N. Y. 34; 3 Am. Rep. 657; *Cagger v. Lansing*, 43 N. Y. 550; *Adams v. Fullam*, 43 Vt. 592; *Peckham v. Barker*, 8 R. I. 17; *Green v. Finin*, 35 Conn. 178; *Mims v. Lockett*, 33 Ga. 9; *Wimberly v. Bryan*, 55 Ga. 198; *Sackett v. Spencer*, 65 Pa. St. 89; *Moss v. Culver*, 64 Pa. St. 414; 3 Am. Rep. 601; *Ingles v. Patterson*, 36 Wis. 373; *Gregg v. Hamilton*, 12 Kan. 333; *Poland v. O'Conner*, 1 Neb. 50; 93 Am. Dec. 327; *Hoffman v. Fett*, 39 Cal. 109; *McCarger v. Rood*, 47 Cal. 138; *Neale v. Neales*, 9 Wall. 1; [*Mims v. Chandler*, 21 S. C. 480; *Moore v. Gordon*, 44 Ark. 334; *Sullivan v. O'Neal*, 66 Tex. 433; *Whiteitt v. Trustees Presbyterian Church*, 110 Ill. 125; *Anderson v. Scott*, 94 Mo. 637; *Burlingame v. Rowland*, 77 Cal. 315.] *Special acts, personal services, etc.*: See *Rhodes v. Rhodes*, 3 Sand. Ch. 279, 284; *Davison v. Davison*, 13 N. J. Eq. 246; *Vanduyne v. Vreeland*, 12 N. J. Eq. 142, 151; *Twiss v. George*, 33 Mich. 253; *Johnson v. Hubbell*, 10 N. J. Eq. 332; 66 Am. Dec. 773; *Cronk v. Trumble*, 66 Ill. 482; *Edwards v. Estell*, 48 Cal. 194; [*Brown v. Sutton*, 129 U. S. 238; *Warren v. Warren*, 105 Ill. 568; *Slingerland v. Slingerland*, 39 Minn. 197; *Smith v. Yocum*, 110 Ill. 142; *Carmichael v. Carmichael*, 72 Mich. 76; 16 Am. St. Rep. 528 (agreement for testamentary disposition of property); *Sharkey v. McDermott*, 91 Mo. 647; 60 Am. Rep.

270 (same); but see *Maddison v. Al-derson*, 8 App. Cas. (H. L.) 467.]

¹ If the vendor has disabled himself from performance after making the contract, and if the disability existed at the time of making the contract from a defect in his title, a court of equity will, in either of these cases, award damages to the vendee-plaintiff, provided he commenced his suit in good faith, without any knowledge of the disability: See *Milkman v. Ordway*, 106 Mass. 232, 253; *Chartier v. Marshall*, 56 N. H. 478; *Wiswall v. McGowan*, Hoff. Ch. 125; *Parkhurst v. Van Cortlandt*, 1 Johns. Ch. 273; *Morss v. Elmendorf*, 11 Paige, 277; *Berry v. Van Winkle*, 2 N. J. Eq. 269; *Hopkins v. Gilman*, 22 Wis. 476; *Tenney v. State Bank*, 20 Wis. 152; *McQueen v. Chouteau's Heirs*, 20 Mo. 222; 64 Am. Dec. 178; *Hamilton v. Hamilton*, 59 Mo. 232; *Gupton v. Gupton*, 47 Mo. 37, 47; *Harrison v. Deramus*, 33 Ala. 463; *Carroll v. Wilson*, 22 Ark. 32; *Foley v. Crow*, 37 Md. 51; [*Combs v. Scott*, 76 Wis. 662;] but will not, in general, grant damages if the plaintiff was aware of the disability at the time of bringing his suit: *Ibid.*; *Hatch v. Cobb*, 4 Johns. Ch. 559; *Kempshall v. Stone*, 5 Johns. Ch. 193; *Smith v. Kelley*, 56 Me. 64; *Sternberger v. McGovern*, 56 N. Y. 12, 20. [See also vol. 1, §§ 181, 237.] For a full and able discussion of the rules as to damages in equity, see *Woodman v. Freeman*, 25 Me. 531, 532, 543.

CHAPTER SECOND.

SPECIFIC ENFORCEMENT OF OBLIGATIONS ARISING FROM TRUSTS AND FIDUCIARY RELATIONS.

ANALYSIS.

§ 1411. General nature, kinds, and classes.

§ 1412. Suits against corporations to compel the transfer or issue of stock.

§ 1411. **General Nature, Kinds, and Classes.**—The nature and objects of the various remedies included in this division are sufficiently indicated by the title, and need no further description. The remedies belonging to the class are suits to enforce express trusts, either private or charitable; suits to enforce resulting or constructive trusts by compelling a conveyance of the legal title; suits against persons in fiduciary relations; suits against administrators or executors; and suits against corporations and their managing officers. The jurisdiction to entertain these suits and to grant these remedies has been described in previous chapters.¹ There remains one particular remedy to be briefly considered,—the suit by a stockholder against a corporation to compel the transfer or issue of stock.

§ 1412. **Suits against Corporations to Compel the Transfer or Issue of Stock.**—Cases frequently arise where corporations or joint-stock companies refuse to recognize the rights of assignees of stock, and make the transfers on their books and issue new certificates in place of the old ones presented, or where certificates have been presented to the company without the owner's consent and negligence, and new certificates have been

¹ See *ante*, concerning charitable trusts, §§ 1018–1029; express private trusts: §§ 1059–1087; resulting and constructive trusts: §§ 1030–1058; fiduciary persons, guardians, etc.: §§ 1088, 1097; administration suits: §§ 1152–

1154; and see *Peyser v. Wendt*, 87 N. Y. 322; suits against corporations and their managing officers: §§ 1089–1096; and see *Brinckerhoff v. Bostwick*, 88 N. Y. 52; *Van Dyck v. McQuade*, 86 N. Y. 38, 45, 46.

issued instead thereof to others purporting to be entitled thereto. In such cases it is well settled that although the law may give some remedy, as that of damages, for the refusal, equity has jurisdiction to compel the corporation to make the transfer and issue new certificates in the one case, to the lawful assignee;¹ and in the other, to decree that the corporation replace the stock upon its books, and issue new certificates to the original owner, or if it is unable to do this by reason of its not having or being able to procure any shares, to pay the value of the stock.²

¹ *Cushman v. Thayer Mfg. Co.*, 76 N. Y. 365; 32 Am. Rep. 315; *Middlebrook v. Merchants' Bank*, 41 Barb. 481; 3 Abb. App. 295; *Purchase v. N. Y. Exch. Bank*, 3 Rob. (N. Y.) 164; [*Iron R. R. Co. v. Fink*, 41 Ohio St. 321; 52 Am. Rep. 84; *Feckheimer v. Nat. Exch. Bank*, 79 Va. 80.] It has been said, in analogy to suits for specific performance of sales of stock, that the action is proper, in this case, where a recovery of damages would furnish inadequate compensation: *Cushman v. Thayer Mfg. Co.*, *supra*. In *Burrall v. Bushwick R. R.*, 75 N. Y. 211, an action was brought to obtain the issue and delivery of a certain number of *shares* of capital stock, in accordance with what purported to be the terms of a certificate. Held, that a subscriber may become the owner of shares, but not in the sense that he can take them away out of the corporate fund. The corporation has no power, and cannot be compelled while continuing its legal existence and carrying on its affairs, to issue and deliver such shares; it can only be compelled to issue their legal evidence, in the shape, generally, of stock certificates.

² *Hildyard v. South Sea Co.*, 2 P. Wms. 77; *Ashby v. Blackwell*, 2 Eden, 299; *Sloman v. Bank of England*, 14 Sim. 475; *Taylor v. Midland R'y Co.*, 28 Beav. 287; 8 H. L. Cas. 751; *Pollock v. National Bank*, 7 N. Y. 274; 57 Am. Dec. 520; *Chew v. Bank of Baltimore*, 14 Md. 299 (sale of stock by lunatic); *Sewall v. Boston etc. Co.*, 4 Allen, 277; 81 Am. Dec. 701; *Pratt v. Taunton Copper Co.*, 123 Mass. 110; 25 Am. Rep. 37; *Pratt v. Boston etc. R. R.*, 126 Mass. 443; *Telegraph Co. v. Davenport*, 97 U. S. 369; [*Blaisdell v. Bohr*, 68 Ga. 56.]

The cases under this head almost invariably arise where the owner's name has been forged. It is no answer that the officers of the company have been without blame in allowing the unauthorized transfer, or that the certificate was obtained by a purchaser in good faith: See *Telegraph Co. v. Davenport*, *supra*. Dividends received on the stock after the unauthorized transfer will be ordered by the decree to be paid by the corporation: See the cases above cited.

SIXTH GROUP.

REMEDIES IN WHICH THE FINAL RELIEF IS PECUNIARY, BUT IS OBTAINED BY THE ENFORCEMENT OF A LIEN OR CHARGE UPON SOME SPECIFIC PROPERTY OR FUND.

CHAPTER FIRST.

FORECLOSURE SUITS—MARSHALING SECURITIES—CREDITORS' SUITS.

ANALYSIS.

§ 1413. Nature, kinds, and classes.

§ 1414. Suits for marshaling of securities.

§ 1415. Creditors' suits.

§ 1413. **Nature, Kinds, and Classes.** — The title of this group plainly indicates the nature and object of the remedies composing it. They are all purely equitable, and therefore belong to the exclusive jurisdiction; because, although the *final* relief is pecuniary, and so resembles the ordinary relief at law, it is obtained through preliminary proceedings, forming a part of the judgment, which belong solely to the procedure and jurisdiction of equity. The group contains the following species of remedies: Suits for the foreclosure by judicial sale of mortgages of real property; suits for the similar foreclosure of mortgages of personal property; suits for the similar foreclosure of pledges; suits to enforce the various equitable liens; suits to enforce the equitable contracts of married women upon their separate property; suits to marshal securities; and creditors' suits. The jurisdiction to entertain most of these suits — when and between what parties most of these remedies will be granted — has already been dis-

cussed as fully as my limits will permit.¹ I shall briefly consider in the present chapter marshaling of securities and creditors' suits.

§ 1414. **Marshaling of Securities.**—The equitable remedy of marshaling securities, with that of marshaling assets, depends upon the principle that a person having two funds to satisfy his demands shall not, by his election, disappoint a party having but one fund. The general rule is, that if one creditor, by virtue of a lien or interest, can resort to two funds, and another to one of them only, — as, for example, where a mortgagee holds a prior mortgage on two parcels of land, and a subsequent mortgage on but one of the parcels is given to another, — the former must seek satisfaction out of that fund which the latter cannot touch.² If, therefore, the prior creditor resorts to the doubly charged fund, the subsequent cred-

¹ See *ante*, foreclosure of mortgages of land: § 1228; of mortgages of chattels: § 1230; of pledges: § 1231. The enforcement of equitable liens; arising from express contract: §§ 1235–37; from implied contract: §§ 1239–1243; from charges by will or deed: §§ 1245–1247; grantor's lien: §§ 1249–1258; vendor's lien: § 1262; vendee's lien: § 1263; deposit of title deeds: § 1267; statutory liens: § 1269. Suits to enforce the equitable contracts of married women upon their separate property: §§ 1121–1126. Although the late English cases hold that these contracts of married women do *not* create any lien, yet the whole remedy in form and substance is exactly the same as though there *was* a lien, and as though its object was to enforce that lien. Furthermore, the American courts generally hold that a lien is created. "Creditors' suits" belong to this group, because they are based upon the conception that an equitable lien is created upon the judgment debtor's property, by means of the judgment and execution returned unsatisfied; and this lien is in reality enforced, although the enforcement may, perhaps, require the ancillary remedies of cancellation, a receiver, etc.

² *Lanoy v. Duke of Athol*, 2 Atk.

444, 446; *Aldrich v. Cooper*, 8 Ves. 382, 395; 2 Lead. Cas. Eq., 4th Am. ed., 2280, notes; *Ex parte Kendall*, 17 Ves. 514, 520; *Baldwin v. Belcher*, 3 Dru. & War. 173, 176; *Hughes v. Williams*, 3 Macn. & G. 683; *Tidd v. Lister*, 10 Hare, 140, 157; 3 De Gex, M. & G. 857; *Averall v. Wade*, Lloyd & G. 252; *Gibson v. Seagrim*, 20 Beav. 614; *Hales v. Cox*, 32 Beav. 118; *Ex parte Alston*, L. R. 4 Ch. 168; *Heyman v. Dubois*, L. R. 13 Eq. 158; *Cheesebrough v. Millard*, 1 Johns. Ch. 409; 7 Am. Dec. 494; *Hawley v. Mancius*, 7 Johns. Ch. 174, 184; *Evertson v. Booth*, 19 Johns. 486, 492; *Besley v. Lawrence*, 11 Paige, 581; *York etc. Ferry Co. v. Jersey Co.*, Hopk. Ch. 460; *Ziegler v. Long*, 2 Watts, 205; *Pallen v. Agricultural Bank*, Freeman. (Miss.) 419; *Glass v. Pullen*, 6 Bush, 346; *Russell v. Howard*, 2 McLean, 489; *Ross v. Duggan*, 5 Col. 85; *Terry v. Rosell*, 32 Ark. 478; [*People v. Remington*, 121 N. Y. 333; *Robeson's Appeal*, 117 Pa. St. 628; *Kendig v. Landis*, 135 Pa. St. 612; *Hudson v. Dismukes*, 77 Va. 242; *State Sav. Bank v. Harbin*, 18 S. C. 425; *Trentman v. Eldridge*, 98 Ind. 525; *Shackelford v. Clark*, 98 Mo. 491; *Gusdorf v. Ikelleheimer*, 75 Ala. 148.]

itor will be substituted, as far as possible, to his rights.¹ These rules must be taken with the modifications and exceptions that in their application the paramount encumbrancer shall not be delayed or inconvenienced in the collection of his debt, for it would be unreasonable that he should suffer because some one else has taken imperfect security;² that the rights of third parties shall not be prejudiced;³ and that the parties themselves are creditors of the same debtor.⁴ The rules of marshaling securities are applied under a variety of circumstances; but generally, in this country, between mortgagees, mortgagees and judgment creditors, and between judgment creditors.⁵

§ 1415. **Creditors' Suits.** — The jurisdiction of equity to entertain suits in aid of creditors⁶ undoubtedly had its

¹ *Cheesebrough v. Millard*, 1 Johns. Ch. 409; *Hunt v. Townsend*, 4 Sand. Ch. 510; *Herriman v. Skillman*, 33 Barb. 378; *Bank of Kentucky v. Vance's Adm'rs*, 4 Litt. 168; *Ramsey's Appeal*, 2 Watts, 228; 27 Am. Dec. 301; [*Nuzum v. Morris*, 25 W. Va. 559; *Hopkins v. Ward*, 30 W. Va. 204; 8 Am. St. Rep. 22.]

² *Evertson v. Booth*, 19 Johns. 486; 493; *Woolcocks v. Hart*, 1 Paige, 185; *Jervis v. Smith*, 7 Abb. Pr., N. S., 217; *Briggs v. Planters' Bank*, *Freem. (Miss.)* 574; *Denham v. Williams*, 39 Ga. 312; *Calloway v. People's Bank*, 54 Ga. 572; *Walker v. Covar*, 2 S. C. 16; *Coker v. Shropshire*, 59 Ala. 542; *Sweet v. Redhead*, 76 Ill. 374; *Wolf v. Smith*, 36 Iowa, 454; [*Hopkins v. Ward*, 30 W. Va. 204; 8 Am. St. Rep. 22; *Witte v. Clark*, 17 S. C. 313; *Clark v. Wright*, 24 S. C. 526; *Wilkes v. Adler*, 68 Tex. 689; *Palmer v. Snell*, 111 Ill. 161; *In re Bates*, 118 Ill. 524; 59 Am. Rep. 383; *Boone v. Clark*, 129 Ill. 466; 15 Am. St. Rep. 724.]

³ *Barnes v. Racster*, 1 Younge & C. Ch. 401; *Averall v. Wade*, Lloyd & G. 252; *Cannon v. Kreipe*, 14 Kan. 324; *Leib v. Stribling*, 51 Md. 285; *McArthur v. Martin*, 23 Minn. 74 (homestead right); *Marr v. Lewis*, 31 Ark. 203; 25 Am. Rep. 553 (ditto); [*Gilliam v. McCormack*, 85 Tenn. 597; *White v. Fulghum*, 87 Tenn. 251 (homestead right); *Armitage v. Toll*, 64 Mich. 412 (same).]

⁴ *Ex parte Kendall*, 17 Ves. 514, 520; *Dorr v. Shaw*, 4 Johns. Ch. 17; *Stevens v. Church*, 41 Conn. 369; [*Rogers v. Blum*, 56 Tex. 1; *Boone v. Clark*, 129 Ill. 466; 15 Am. St. Rep. 724.] The rule, also, does not apply between a debtor and his creditor, but only between different creditors: *Rogers v. Meyers*, 68 Ill. 92; [*Plain v. Roth*, 107 Ill. 588.]

⁵ When creditor No. 1 has a lien upon two funds, A and B, and creditor No. 2 has a subsequent lien upon fund B alone, the theory of the remedy is, that the lien of creditor No. 2 is transferred to and enforced against fund A. It is possible that some cases may have carried the principle to the extent of permitting creditor No. 2 to maintain an equitable suit for the purpose of compelling creditor No. 1 to enforce his security, in the first place, out of fund A, so as to leave fund B, if possible, subject to the plaintiff's subsequent lien. This form of the relief is not, in my opinion, warranted by the principle; it was not allowed in the analogous remedy of marshaling assets; and it seems to interfere with the prior vested rights of creditor No. 1.

⁶ Creditors' suits may be brought either while the debtor is living, or after his death against his estate. In the latter case, the suit ends in administration, if the executor or administrator does not admit assets. If assets are admitted, a decree is simply

origin in the narrowness of the common-law remedies by writs of execution. These writs, issued by courts of common law, besides being otherwise limited in their operation, were, of course, confined to those estates and interests recognized by the law, and did not extend to estates and interests equitable in their nature. Creditors' suits were therefore permitted to be brought in those instances where the relief by execution at common law was ineffectual; as for a discovery of assets;¹ to reach equitable and other interests not subject to levy and sale at law;² and to set aside fraudulent conveyances and obstructions.³ Statutes in England and in certain American states have greatly extended the scope of writs of execution, thereby providing for adequate legal relief in cases where formerly resort to equity was necessary, and even extending the relief to instances where, perhaps, a creditor's bill would not lie.⁴ In other states, statutes have increased

made for payment of the debt. The jurisdiction of equity to entertain suits of this latter class has been considered under the head of Administration: See *ante*, § 1154. The present discussion will be confined to suits of the first class.

¹ Hadden v. Spader, 20 Johns. 554; 5 Johns. Ch. 280; Hendricks v. Robinson, 2 Johns. Ch. 283; Gordon v. Lowell, 21 Me. 251; Bay State Iron Co. v. Goodall, 30 N. H. 223; Miers v. Zanesville etc. Co., 11 Ohio, 273; Cadwalader v. Granville etc. Soc., 11 Ohio, 292; Thomas v. Adams, 30 Ill. 37; Clarke v. Webb, 2 Hen. & M. 8; Le Roy v. Rogers, 3 Paige, 234; Trego v. Skinner, 42 Md. 426; [Lawson v. Warren, 89 Ala. 534.]

² Halsted v. Davison, 10 N. J. Eq. 290; Montgomery v. McGee, 7 Humph. 234; Wallace v. Smith, 2 Handy, 78; Galveston etc. R'y v. McDonald, 53 Tex. 510; Lackland v. Garesche, 56 Mo. 267; Harris v. Alcock, 10 Gill & J. 226; 32 Am. Dec. 158; Rose v. Bevan, 10 Md. 466; 69 Am. Dec. 170; Hadden v. Spader, 20 Johns. 554; 5 Johns. Ch. 280; Bayard v. Hoffman, 4 Johns. Ch. 450; Tompkins v. Fonda, 4 Paige, 448. [Whether, in the absence of fraud, or some other special

ground for equitable relief, and when no statute gives jurisdiction, creditors' suits may be brought to reach a legal *chose in action* of the debtor, not subject to execution at law, is a question on which there has been much discussion. In *Greene v. Keene*, 14 R. I. 388, 51 Am. Rep. 400, it was held that such a bill (to apply to the judgment-debt royalties under a patent) could not be sustained; following *Donovan v. Finn*, *Hopk. Ch.*, 2d ed., 59.]

³ *Beck v. Burdett*, 1 Paige, 305; 19 Am. Dec. 436; *Gates v. Boomer*, 17 Wis. 455; *Hagan v. Walker*, 14 How. 29; *Hammond v. Hudson River etc. Co.*, 20 Barb. 378; *McCaffrey v. Hickey*, 66 Barb. 489; *Tantum v. Green*, 21 N. J. Eq. 364; *Pulliam v. Taylor*, 50 Miss. 551; *Trego v. Skinner*, 42 Md. 426; [*Mann v. Appel*, 31 Fed. Rep. 378; *Lewis v. Shainwald*, 48 Fed. Rep. 492.]

⁴ In England, by the statute of frauds, 29 Car. II., c. 3, sec. 10, legal execution was given against the lands, tenements, and hereditaments of a person seised in trust for the debtor at the time of execution sued out. This exception to the property capable of being reached by the ordinary writs was obviously very narrow, — extend-

the efficiency of creditors' suits by dealing with the subject directly.¹ It is a necessary result from the whole theory of the creditors' suits that jurisdiction in equity will not be entertained where there is a remedy at law.² The general rule is, therefore, that a judgment must be obtained, and certain steps taken towards enforcing or perfecting such judgment, before a party is entitled to institute a suit of this character.³ In this there is a uniformity of opinion, but the difficulty arises in determining exactly how far a plaintiff should proceed after he has obtained his judgment.⁴ It is, of course, necessary for

ing only to real estate *seised* in trust at the time of execution sued out, and not embracing chattels real, trusts under which the debtor had not the whole interest, equities of redemption, or any equitable interest parted with before execution sued out: See *Forth v. Duke of Norfolk*, 4 Madd. 503. By statute 1 & 2 Vict., c. 110, the remedies of creditors by ordinary writs of execution are very complete. As an example of the legislation in American states of the first type referred to in the text, see Cal. Code Civ. Proc., sec. 683.

¹ [Statutes in several states authorize a suit to be instituted in equity by a general creditor without a lien, to establish his debt, to remove fraudulent obstructions, and the like, without first proceeding to obtain judgment at law: See *Bernard v. Barney M. Co.*, 147 Mass. 356; *Balls v. Balls*, 69 Md. 383; *Stovall v. Border Grange Bank*, 78 Va. 188; *Taft v. Pickering*, 28 W. Va. 330; *Lehman v. Meyer*, 67 Ala. 396. These statutory suits cannot be maintained in the federal courts, as conflicting with the constitutional right to trial by jury: *Scott v. Neely*, 140 U. S. 106; *United States v. Ingate*, 48 Fed. Rep. 251.]

² See the cases cited in the next note but one; [also §§ 279, 280.]

³ It is impossible to state a more definite rule than this, as will subsequently appear.

⁴ *When an execution returned unsatisfied is or is not an essential preliminary.*

—Much of the conflict doubtless results from the effect judgments and writs of execution have in different states. The rule seems to be sustained by the weight of authority, that before

a creditor's suit can be brought to reach choses in action and personal property in such a shape or form or under such conditions that no levy can be made at law, execution must have been issued and a return of *nulla bona* made: *Beck v. Burdett*, 1 Paige, 305, 309; *Willis v. Moore*, Clarke Ch. 150; *Spader v. Davis*, 5 Johns. Ch. 280; 20 Johns. 554; *Brinkerhoff v. Brown*, 4 Johns. Ch. 671; *McElwain v. Willis*, 9 Wend. 548, 562, 565, 569; *Beardsley Seythe Co. v. Foster*, 36 N. Y. 561; *Dunlevy v. Tallmadge*, 32 N. Y. 457; *Crippen v. Hudson*, 13 N. Y. 161; *Parshall v. Tillon*, 13 How Pr. 7; *Scott v. Wallace*, 4 J. J. Marsh. 654; *Wooley v. Stone*, 7 J. J. Marsh. 302; *Morgan v. Crabb*, 3 Port. 470; *Brown v. Bank of Mississippi*, 31 Miss. 454; *Suydam v. North West Ins. Co.*, 51 Pa. St. 394; [*Baxter v. Moses*, 77 Me. 465; 52 Am. Rep. 783.] On the other hand, where it is sought to reach equitable interests of a debtor in, or to remove fraudulent obstructions from, real property, judicial opinion inclines in favor of the rule that execution must have been issued, but a return is unnecessary: *Neate v. Duke of Marlborough*, 3 Mylne & C. 407; *Shirley v. Watts*, 3 Atk. 200; *North American F. Ins. Co. v. Graham*, 5 Sand. 197; *McCullough v. Colby*, 5 Bosw. 477; *Hendricks v. Robinson*, 2 Johns. Ch. 283, 296; *Beck v. Burdett*, 1 Paige, 305, 308; 19 Am. Dec. 436; *McElwain v. Willis*, 9 Wend. 548, 568; *Buswell v. Lincks*, 8 Daly, 518; *Geery v. Geery*, 63 N. Y. 252; *Jones v. Green*, 1 Wall. 330; *Manchester v. McKee*, 4 Gilm. 511; *Thurmond v. Reese*, 3 Ga. 449; 46 Am. Dec. 440; *Newnan v. Willetts*, 52 Ill.

the creditor to allege and prove that he has taken the necessary proceedings at law before he can show a case

98; *Loving v. Pairo*, 10 Iowa, 282; 77 Am. Dec. 108; *Miller v. Dayton*, 47 Iowa, 312; [*Adsit v. Butler*, 87 N. Y. 585; *Ahlhauser v. Doud*, 74 Wis. 406.] The equitable relief in this case rests on the fact that the judgment is or is in the nature of a lien, which should be perfected by an execution taken out, in which stage of the proceedings a creditor will be assisted. As regards choses in action and personal property, however, under the above circumstances, no specific lien is created until proceedings are taken in equity. It therefore follows from the preceding that if the judgment itself constitutes, or is held to constitute, a specific lien, execution is unnecessary: *Cornell v. Radway*, 22 Wis. 260; *Fleming v. Grafton*, 54 Miss. 79; *McNairy v. Eastland*, 10 Yerg. 310; *Montgomery v. McGee*, 7 Humph. 234; [*Wadsworth v. Schisselbauer*, 32 Minn. 84;] and where the judgment constitutes no lien on real estate, the creditor must make a levy, if the debtor has the legal title, and if he has but an equitable title, execution must be returned, as in the case of personal property, before a suit in equity can be maintained: *Webster v. Clark*, 25 Me. 313; *Dana v. Haskell*, 41 Me. 25; *Hartshorn v. Eames*, 31 Me. 93; *Corey v. Greene*, 51 Me. 115; *Dockray v. Mason*, 48 Me. 178; *Griffin v. Nitcher*, 57 Me. 270, 272. [Some cases make a distinction between suits to reach equitable interests of a debtor in real or personal property, and suits to remove fraudulent obstructions or cancel fraudulent conveyances. Execution and return *nulla bona*, it is held, are necessary prerequisites to the former; while for the purpose of maintaining the latter it is necessary to show merely that execution has issued: *Logan v. Logan*, 22 Fla. 561; 1 Am. St. Rep. 261; or if the judgment itself is a lien on real estate merely, that a judgment has been docketed, when it is sought to reach lands fraudulently conveyed: *Wadsworth v. Schisselbauer*, 32 Minn. 84; *Multnomah Street R'y Co. v. Harris*, 13 Or. 198. It has been held that the return of the execution unsatisfied is necessary when the conveyance is assailed as merely *volun-*

tary, for in such case it cannot appear that any wrong has been done until it is shown that the debtor has not the means of paying the debt with property other than that covered by the contested conveyance: *National Bank v. Kinard*, 28 S. C. 101, 112; *Compton v. Patterson*, 28 S. C. 152.]

Special exceptions.—The circumstances constituting exceptions to the general rule as stated in the text are not numerous; and as to what will excuse issuing of an execution, or issuing of an execution and a return unsatisfied, the cases are not unanimous. In *Shaw v. Dwight*, 27 N. Y. 244, 84 Am. Dec. 275, where it was sought to set aside fraudulent obstructions, issuing of execution in counties where the lands were situated was held unnecessary, an execution having been issued in the county where the debtor resided, and returned unsatisfied. And see *Payne v. Sheldon*, 63 Barb. 169. [But where the creditor knew that the debtor had property subject to execution in a certain county, or where there was a legal presumption that there was property belonging to the debtor in that county, it was held to be a necessary preliminary to the filing of a creditor's bill that execution be issued to the sheriff of the county: See *Durand v. Gray*, 129 Ill. 9, and cases cited.] Where a judgment was obtained against one of two persons sued as joint debtors, and an execution thereon was returned unsatisfied, a creditor's suit may be begun without proceeding to judgment and execution against the other joint debtor: *Hiler v. Heterick*, 5 Daly, 33; see *Voorhees v. Howard*, 4 Abb. App. 503. [It is said that a suit may be maintained to set aside a conveyance made in fraud of a decree in equity, — as, for example, an award of alimony without obtaining execution on the decree: *Twell v. Twell*, 6 Mont. 19, and cases cited.] Whether the debtor's insolvency will obviate the necessity of proceeding at law in the same manner as if he were solvent is unsettled; it has been held on the one side that insolvency is an excuse: *Tabb v. Williams*, 4 Jones Eq. 352; *Turner v. Adams*, 46 Mo. 95; [and see *Case v. Beauregard*, 101 U. S. 688;] and on the other, that it is not:

requiring the interposition of equity. Whether an equitable suit, analogous to the creditor's suit, will be allowed in aid of the lien created by an attachment, before the recovery of judgment, is a question to which the American courts have given directly conflicting answers.

Mixon v. Dunklin, 48 Ala. 455; *Parish v. Lewis, Freem.* (Miss.) 299.

There are exceptions to the rule even that a judgment is required. Thus it is held that under certain circumstances equity will lend its aid to set aside fraudulent conveyances of property and apply it to a creditor's demands, by a proceeding that may be called "equitable attachment," without a judgment having been obtained, where the debtor has absconded, or removed from or resides out of the state: *Scott v. McMillen*, 1 Litt. 302; 13 Am. Dec. 239; *Kipper v. Glancey*, 2 Blackf. 356; *Peay v. Morrison's Ex'rs*, 10 Gratt. 149; *Pope v. Solomon*, 36 Ga. 541; [*Merchants Nat. Bank v. Paine*, 13 R. I. 592. See also *National Tradesmen's Bank v. Wetmore*, 124 N. Y. 248; *Quarl v. Abbett*, 102 Ind. 234; 52 Am. Rep. 662. Mere insolvency of the debtor does not dispense with the necessity of first obtaining a judgment, whether or not it will dispense with the necessity of an execution: *Ginn v. Brown*, 14 R. I. 524; but see *Austin v. Morris*, 23 S. C. 402. For a case where delay would be highly prejudicial to the creditor, and the obtaining of a judgment was dispensed with, see *McMillan v. Knapp*, 76 Ga. 171; 2 Am. St. Rep. 29;] and to reach money of an absconding debtor not subject to garnishment at law: *Pendleton v. Perkins*, 49 Mo. 565.

In aid of attachments. — An exception has been sought to be made in the case of attaching creditors, and the question has been presented whether equity will ever assist an attachment at law. It has been held, in accordance with the prevailing theory, that a creditor's suit may be maintained to reach real estate when a specific lien is created, that an attachment constitutes such a lien as to furnish ground for equitable interference to remove fraudulent obstructions or impediments on the property, real or personal, attached, without the requirement of a judgment obtained, or

the steps subsequent thereto, necessary in ordinary creditors' suits: *Falconer v. Freeman*, 4 Sand. Ch. 565; *Greenleaf v. Mumford*, 19 Abb. Pr. 469; *Skinner v. Stuart*, 15 Abb. Pr. 391; *Bates v. Plonsky*, 62 How. Pr. 429; *Kelly v. Lane*, 42 Barb. 594; *Mechanics' etc. Bank v. Dakin*, 51 N. Y. 519; *Heyneman v. Dannenberg*, 6 Cal. 376; 65 Am. Dec. 519; *Scales v. Scott*, 13 Cal. 76; *Robert v. Hoelges*, 16 N. J. Eq. 299; *Curry v. Glass*, 25 N. J. Eq. 108; *Hunt v. Field*, 9 N. J. Eq. 36; 57 Am. Dec. 365; *Williams v. Michenor*, 11 N. J. Eq. 520; *Ward v. McKenzie*, 33 Tex. 297; 7 Am. Rep. 261; *Tappan v. Evans*, 11 N. H. 311; *Dodge v. Griswold*, 8 N. H. 425; *Stone v. Anderson*, 26 N. H. 506; *Sheafe v. Sheafe*, 40 N. H. 516; see *Castle v. Bader*, 23 Cal. 76; *Chicago & A. Bridge Co. v. Anglo-American etc. Co.*, 46 Fed. Rep. 584 (Missouri); *Taylor v. Branscombe*, 74 Iowa, 534; *Little v. Ragan*, 83 Ky. 321; *Barton v. Barton*, 80 Ky. 600; *Perham v. Haverhill Fiber Co.*, 64 N. H. 2; the right to maintain a creditor's suit in aid of attachment is secured by statute in Wisconsin: *Evans v. Laughton*, 69 Wis. 133; Wis. Rev. Stats., sec. 3186; *Dawson v. Sims*, 14 Or. 561; and see *Quarl v. Abbett*, 102 Ind. 234; 52 Am. Rep. 662; *Johnson v. Heidenheimer*, 65 Tex. 263.] In pursuance of this doctrine, when the attaching creditor or officer is sued for taking the property, it may be shown as a good defense that the plaintiff's title is fraudulent: *Hall v. Stryker*, 27 N. Y. 596; *Rinchey v. Stryker*, 28 N. Y. 45; 84 Am. Dec. 324; 31 N. Y. 140. Other decisions hold that such a suit cannot be maintained: *Thurber v. Blanck*, 50 N. Y. 80; *Lawrence v. Bank of Republic*, 35 N. Y. 320; *Greenleaf v. Mumford*, 50 Barb. 543; *Griffin v. Nitcher*, 57 Me. 270; *Tennent v. Battey*, 18 Kan. 324; *Weil v. Lankins*, 3 Neb. 384; *Bigelow v. Andress*, 31 Ill. 322; *Martin v. Michael*, 23 Mo. 50; 66 Am. Dec. 656; *McMinn v. Whelan*, 27 Cal. 300.

SEVENTH GROUP.

REMEDIES IN WHICH THE FINAL RELIEF IS WHOLLY PECUNIARY, AND IS OBTAINED IN THE FORM OF A GENERAL PECUNIARY RECOVERY.

CHAPTER FIRST.

SUITS FOR CONTRIBUTION, EXONERATION, AND SUBROGATION.

ANALYSIS.

§ 1416. General nature, kinds, and classes.

§ 1417. Exoneration; rights of surety against the principal debtor.

§ 1418. Contribution.

§ 1419. Subrogation.

§ 1416. **General Nature, Kinds, and Classes.**—The remedies composing this group belong to the concurrent jurisdiction of equity, since the final reliefs are the same in form and substance as that granted under like circumstances by a judgment at law,—a general pecuniary recovery,—and since the primary rights and interests of the parties are generally recognized and protected by the law. Within the group are included suits by assignees of things in action; suits by equitable assignees of a fund;¹ suits for contribution in general; suits for contribution, exoneration, and subrogation, growing out of suretyship; suits for an accounting in general; and suits under various circumstances, and between particular parties, in which an accounting is a necessary element of the relief,—as, for example, between partners.

¹ As to suits by assignees of things equitable assignees of a fund: §§ 1280—in action, see *ante*, §§ 1277, 1278; by 1284.

§ 1417. **Exoneration — Rights of Surety against the Principal Debtor.** — When a surety has actually paid or satisfied the principal's obligation, or any part thereof, he is entitled to be reimbursed by the principal debtor, and can maintain an equitable action for that purpose.¹ He

¹ The right of recovery being based upon an implied contract of the principal, a jurisdiction at law to give the same relief has become established, and is ordinarily resorted to in this country. The equitable jurisdiction, however, still exists: [See § 278.] The surety is entitled to exoneration, whether his payment was voluntary or compulsory; if compulsory, he can recover back his reasonably necessary costs and expenses. The jurisdiction extends to all those who in reality stand in a position of suretyship towards principal debtors; e. g., to a surety for a prior surety: *Dering v. Earl of Winchelsea*, 1 Cox, 318; 1 Lead. Cas. Eq., 4th Am. ed., 120, 124, 134; *Craythorne v. Swinburne*, 14 Ves. 160; *Hazelton v. Valentine*, 113 Mass. 472, 479; *Savage v. Winchester*, 15 Gray, 453; *Konitzky v. Meyer*, 49 N. Y. 571; *Townsend v. Whitney*, 75 N. Y. 425; *Harris v. Warner*, 13 Wend. 400; *Neimcewicz v. Gahn*, 3 Paige, 614; 11 Wend. 312; *Wesley Church v. Moore*, 10 Pa. St. 273; *Baxter v. Moore*, 5 Leigh, 219; *Butler v. Butler's Adm'r*, 8 W. Va. 677; *Hare v. Grant*, 77 N. C. 203; *Moore v. Young*, 1 Dana, 516; *Hamilton v. Johnston*, 82 Ill. 39; *Hearne v. Keath*, 63 Mo. 84. If the surety satisfies the obligation at less than its full amount, he can only recover from the principal debtor what he has actually paid, or the value of the property given up; *Reed v. Norris*, 2 Mylne & C. 361, 375; *Bonney v. Seely*, 2 Wend. 481; *Blow v. Maynard*, 2 Leigh, 30; [Delaware, L., & W. R. R. Co. v. Oxford Iron Co., 38 N. J. Eq. 151. Where principal and surety jointly execute a mortgage to the creditor of their separate lands, the surety may require that the lands of the principal be first applied in satisfaction of the debt: *Gresham v. Ware*, 79 Ala. 192; and see *Bell v. McConkey*, 82 Va. 176.]

Suit before payment. — After the obligation becomes payable, the surety, before he has paid it, and whether he has been sued by the creditor or not,

may maintain a suit in equity against the debtor — in the nature of a bill *quia timet* — to compel him to pay the debt or perform the obligation; provided the creditor can himself enforce payment or performance, and neglects or refuses to do so. The creditor is, of course, made a co-defendant: Cal. Civ. Code, sec. 2846; *Dering v. Earl of Winchelsea*, *supra*; notes in 2 Lead. Cas. Eq., 4th Am. ed., 278, 280, 283, 306, 1896; *Nisbet v. Smith*, 2 Brown Ch. 579, 582; *Comes Ranelagh v. Hayes*, 1 Vern. 189; *Antrobus v. Davidson*, 3 Mer. 569; *Padwick v. Stanley*, 9 Hare, 627; *Wooldridge v. Norris*, L. R. 9 Eq. 410; *Beaver v. Beaver*, 23 Pa. St. 167; *Ardesco Oil Co. v. N. A. Oil etc. Co.*, 66 Pa. St. 375, 381; *Bishop v. Day*, 13 Vt. 81; 37 Am. Dec. 582; *Hayes v. Ward*, 4 Johns. Ch. 123, 131; 8 Am. Dec. 554; *King v. Baldwin*, 2 Johns. Ch. 554; 17 Johns. 384; *Norton v. Reid*, 11 S. C. 593; *White v. Schurer*, 4 Baxt. 23; *Gilliam v. Esselman*, 5 Sneed, 86; *Irick v. Black*, 17 N. J. Eq. 189; *Stephenson v. Taverners*, 9 Gratt. 389; *Rice v. Downing*, 12 B. Mon. 44; *Dempsey v. Bush*, 18 Ohio St. 376; *Fame Ins. Co.'s Appeal*, 83 Pa. St. 396, 405; [Miller v. Stout, 5 Del. Ch. 259; Delaware, L., & W. R. R. Co. v. Oxford Iron Co., 38 N. J. Eq. 151; Merwin v. Austin, 58 Conn. 22; Moore v. Topliff, 107 Ill. 241; Hellams v. Abercrombie, 15 S. C. 110; 40 Am. Rep. 684. That one of several sureties on a trustee's bond cannot maintain a suit to compel him to substitute solvent sureties for those who have become insolvent, or to give other and additional security, see *Ridgeway v. Potter*, 114 Ill. 457; 55 Am. Rep. 875.] Conversely, when the surety has been discharged by the acts of the creditor in dealing with the principal debtor, he may maintain a suit in equity for a decree declaring his liability at an end, and restraining the creditor if necessary: See *Morley v. Dickinson*, 12 Cal. 561.

may also maintain a *quia timet* suit in equity before any payment.

§ 1418. **Contribution.**—Where there are two or more sureties for the same principal debtor, and for the same debt or obligation, whether on the same or on different instruments, and one of them has actually paid or satisfied more than his proportionate share of the debt or obligation, he is entitled to a contribution from each and all of his co-sureties, in order to reimburse him for the excess paid over his share, and thus to equalize their common burdens. The same doctrine applies, and the same remedy is given, between all those who are jointly, or jointly and severally, liable on contract or obligation in the nature of contract.¹ The right, however, may be

¹ The doctrine of contribution rests upon the maxim, Equality is equity: See vol. 1, §§ 405–412. Although contribution is based upon general considerations of justice, and not upon any notion of an implied promise, a jurisdiction at law has become well settled which is sufficient in all ordinary cases of suretyship or joint liability. The equitable jurisdiction still remains, and has some most important advantages: [See § 278.] All the co-sureties and the principal debtor being parties to the equity suit, the liabilities of each and their exoneration by the principal debtor can be adjusted and established by a single decree. If one or more of the co-sureties are insolvent, the plaintiff can in equity obtain a proportionate increase of contribution from the others who are solvent. It seems, however, that the surety must first resort to the principal debtor; and that he can only compel contribution in equity when he has failed to obtain exoneration from the principal. Of course, there can be no such limitation to a contribution among joint debtors not sureties. There is no contribution among tort-feasors. As to contribution among co-trustees, see *ante*, § 1081; among owners of lands subject to encumbrance: §§ 1221–1226. As illustrations of the general doctrine, see *Dering v. Earl of Winchelsea*, 1 Cox, 318; 1 Lead. Cas. Eq.

120, 124, 134; *Craythorne v. Swinburne*, 14 Ves. 160; *Primrose v. Bromley*, 1 Atk. 89; *Stirling v. Forrester*, 3 Bligh, 575; *Yonge v. Reynell*, 9 Hare, 809; *Hitchman v. Stewart*, 3 Drew. 271; *Mayor of Berwick v. Murray*, 7 De Gex, M. & G. 497; *Whiting v. Burke*, L. R. 6 Ch. 342; *Hichborn v. Fletcher*, 66 Me. 209; 22 Am. Rep. 562; *Morgan v. Smith*, 70 N. Y. 537; *Wells v. Miller*, 66 N. Y. 255; *Johnson v. Harvey*, 84 N. Y. 363; 38 Am. Rep. 515; *Smith v. State*, 46 Md. 617; *Nally v. Long*, 56 Md. 567; *Bright v. Lennon*, 83 N. C. 183; *Scofield v. Gaskill*, 60 Ga. 277; *Owen v. McGehee*, 61 Ala. 440; *Broughton v. Wimberly*, 65 Ala. 549; *Jenkins v. Lockard's Adm'r*, 66 Ala. 377; *Magruder v. Admire*, 4 Mo. App. 133; *Stephens v. Meek*, 6 Lea, 226; *Oldham v. Broom*, 28 Ohio St. 41; *Camp v. Bostwick*, 20 Ohio St. 337; 5 Am. Rep. 669; *Robertson v. Deatherage*, 82 Ill. 511; *Conover v. Hill*, 76 Ill. 342; *Wagenseller v. Prettyman*, 7 Ill. App. 192; *Curtis v. Parks*, 55 Cal. 106; *Taylor v. Reynolds*, 53 Cal. 686; *Powell v. Powell*, 48 Cal. 234; *Dussol v. Bruguere*, 50 Cal. 456; *Black v. Shreeve*, 7 N. J. Eq. 440; *Bowen v. Hoskins*, 45 Miss. 183; 7 Am. Rep. 728; *Mills v. Hyde*, 19 Vt. 59; 46 Am. Dec. 177; *Strong v. Mitchell*, 19 Vt. 644; *Wayland v. Tucker*, 4 Gratt. 267; 50 Am. Dec. 76; *Campbell v. Mesier*, 4 Johns. Ch. 334; 8 Am. Dec. 570; 6 Johns.

controlled or modified by express agreement among the co-sureties or debtors.

§ 1419. **Subrogation.** — The surety who has paid or satisfied the principal's debt or obligation is entitled to be subrogated to and to have the benefit of all securities which may at any time have been put into the creditor's hands by the principal debtor, or which the creditor may have obtained from the principal debtor. By the fact of payment, the surety becomes an equitable assignee of all such securities, and is entitled to have them assigned and delivered up to him by the creditor, in order that he may enforce them for his own reimbursement and exoneration. If, therefore, the creditor refuses to surrender up such securities, the surety may maintain an equitable suit to compel their assignment and surrender. The doctrine and remedy of subrogation are extended also to the creditor, who is subrogated to and entitled to the benefit of all securities given to a surety for purposes of *his* indemnification by the principal debtor; and also between co-sureties, so that one surety, in enforcing his rights of exoneration and of contribution, is subrogated to securities given to his co-surety.¹ It

Ch. 21; [Moore v. Baker, 34 Fed. Rep. 1 (remedy at law need not first be exhausted); Fuller v. Ins. Co., 36 Fed. Rep. 473; Dillenbeck v. Dygert, 97 N. Y. 303; 49 Am. Rep. 525; Chenault v. Bush, 84 Ky. 523. That the surety cannot, in general, enforce contribution until he has paid the common debt, or until judgment for it has been recovered against him, see Strother's Adm'r v. Mitchell's Ex'r, 80 Va. 149; Gourdin v. Trenholm, 25 S. C. 362. Whether one who becomes surety at the request of another surety is liable to contribute at the suit of the latter, there being no contract of immunity for the former's benefit, is a disputed question. Burnett v. Millsaps, 59 Miss. 333, favors such liability. It has been held that a surety who has become liable at the request of a co-surety, and whom the co-surety has agreed to indemnify, may, after the debt is due, maintain

a bill in equity to compel the co-surety to pay the debt and save him harmless, in analogy with the suit by a surety to compel payment by the principal debtor: Hayden v. Thrasher, 18 Fla. 795.] *Where one or more co-sureties are insolvent:* Hitchman v. Stewart, 3 Drew. 271; Mayor etc. v. Murray, 7 De Gex, M. & G. 497; Magruder v. Admire, 4 Mo. App. 133; Burrows v. McWhann, 1 Desaus. Eq. 409; Breckinridge v. Taylor, 5 Dana: 110; [Gross v. Davis, 87 Tenn. 226; 10 Am. St. Rep. 635.] On death of a co-surety, his estate is liable to contribute: Primrose v. Bromley, 1 Atk. 89; Dussol v. Bruguere, 50 Cal. 456; Johnson v. Harvey, 84 N. Y. 303; 38 Am. Rep. 515; Stephens v. Meek, 6 Lea, 226.

¹ The doctrine of subrogation is of wide extent and operation in various departments of equity jurisprudence. The grounds and reasons upon which

necessarily follows from the surety's right of subrogation that the creditor cannot, without the surety's assent, sur-

it depends have already been explained. Being a doctrine of purely equitable origin and nature, its operations is always controlled by equitable principles. It is, therefore, never enforced so as to defeat or interfere with the superior or equal equities of third persons, or with the legal right of third persons growing out of express contract. As to subrogation among encumbrancers, see *ante*, §§ 1211-1214. The remedy of subrogation has been granted to sureties much more favorably and extensively by the American equity jurisprudence than by the English. In England, prior to modern legislation, if a surety paid a contract which he executed jointly with his principal debtor, or paid a judgment recovered against him and his principal jointly, the contract or judgment was thereby ended and discharged, and could not itself be enforced by the surety. The courts of all the American states, with very few exceptions, have extended the remedy of subrogation to such cases; they enable the surety to enforce such bond, or contract, or judgment immediately against the principal debtor, although the surety was himself directly liable. In other words, by the English doctrine, the surety became equitable assignee only of collateral securities; by the American doctrine he becomes equitable assignee, not only of collateral securities, but of the principal undertaking. As illustrations of the doctrine, see *Dering v. Earl of Winchelsea*, *supra*; 2 Lead. Cas. Eq. 277-291; notes to *Aldrich v. Cooper*, 8 Ves. 282; *Mayhew v. Crickett*, 2 Swanst. 185; *Law v. East. I. Co.*, 4 Ves. 824; *Hodgson v. Shaw*, 3 Mylne & K. 183, 190; *Pearl v. Deacon*, 24 Beav. 186; 1 De Gex & J. 461; *Lake v. Brutton*, 18 Beav. 34; 8 De Gex, M. & G. 440; *Strange v. Fooks*, 4 Giff. 408; *Drew v. Lockett*, 32 Beav. 499; *Capel v. Butler*, 2 Sim. & St. 457; *Scribner v. Adams*, 73 Me. 541; *Kelly v. Herrick*, 131 Mass. 373; *Thompson v. White*, 48 Conn. 509; *Townsend v. Whitney*, 75 N. Y. 425; 15 Hun, 93; *Van Santen v. Standard Oil Co.*, 81 N. Y. 171; *Cole v. Malcolm*, 66 N. Y. 363; *Lewis v. Palmer*, 28 N. Y. 271; *Steele's Appeal*,

72 Pa. St. 101; *Bleakley's Appeal*, 66 Pa. St. 187, 191; *Price v. Trusdell*, 28 N. J. Eq. 200; *Receivers of N. J. etc. R'y v. Wortendyke*, 27 N. J. Eq. 658; *Irick v. Black*, 17 N. J. Eq. 189; *Dent v. Wait's Adm'r*, 9 W. Va. 41; *Hevener v. Berry*, 17 W. Va. 474; *York v. Landis*, 65 N. C. 535; *Saffold v. Wade's Ex'r*, 51 Ala. 214; *Knighton v. Curry*, 62 Ala. 404; *Osborn v. Noble*, 46 Miss. 449; *Davis v. Walker*, 51 Miss. 659; *Talbot v. Wilkins*, 31 Ark. 411; *Fishback v. Weaver*, 34 Ark. 569; *Farmers' etc. Bank v. Sherley*, 12 Bush, 304; *Storms v. Storms*, 3 Bush, 77; *Allen v. Henley*, 2 Lea, 141; *Harlan v. Sweeny*, 1 Lea, 682; *Kirkman v. Bank of America*, 2 Cold. 397; *Smith v. Rumsey*, 33 Mich. 183; *Keith v. Hudson*, 74 Ind. 333; *Prout v. Lomer*, 79 Ill. 331; *Hollingsworth v. Pearson*, 53 Iowa, 53; *McArthur v. Martin*, 23 Minn. 74; *Eaton v. Hasty*, 6 Neb. 419; 29 Am. Rep. 265; *Van Orden v. Durham*, 35 Cal. 136; *Lidderdale's Ex'rs v. Executor of Robinson*, 12 Wheat. 594; *Norwood v. Norwood*, 2 Har. & J. 238; *Wright v. Grover*, 82 Pa. St. 80; *Marsh v. Pike*, 10 Paige, 595; *McDougald v. Dougherty*, 14 Ga. 674; *Neilson v. Fry*, 16 Ohio St. 552; 91 Am. Dec. 110; *Dearborn v. Taylor*, 18 N. H. 153; *Pierson v. Catlin*, 18 Vt. 77; *Hayes v. Ward*, 4 Johns. Ch. 123; 8 Am. Rep. 554; [*Forbes v. Jackson*, 19 Ch. Div. 615; *Philadelphia & R. R. Co. v. Little*, 41 N. J. Eq. 519; *Forrest's Ex'rs v. Ludington*, 68 Ala. 1; *Miller v. Stout*, 5 Del. Ch. 259; *Penn v. Ingles*, 82 Va. 65; *Ward's Appeal*, 100 Pa. St. 289; *Wildrip v. Black*, 74 Cal. 409; *Taylor v. Tarr*, 84 Mo. 420; *Lochenmeyer v. Fogarty*, 112 Ill. 572; *Pierce v. Higgins*, 101 Ind. 178 (surety on appeal bond subrogated to the lien of the judgment appealed from and paid by him); *Gilbert v. Neely*, 35 Ark. 24 (surety on guardian's bond subrogated to ward's remedies against the guardian); *Blake v. Traders' Nat. Bank*, 145 Mass. 13 (surety on trustee's bond); *Rice v. Rice*, 408 Ill. 199 (surety on guardian's bond, who has paid a judgment thereon, may enforce for his own benefit a trust which resulted to the ward by the guardian's invest-

render, give up, release, or discharge any such securities, or render them in any way unavailable to the surety,

ing the ward's money in lands). Guarantors of negotiable paper: *Conner v. Howe*, 35 Minn. 518; *Havens v. Willis*, 100 N. Y. 488 (surety subrogated to judgment recovered against himself and debtor jointly); *Ferguson v. Carson*, 86 Mo. 673; *Searing v. Berry*, 58 Iowa, 20; *Bank of Old Dominion v. Allen*, 76 Va. 200; *Garvin v. Garvin*, 27 S. C. 472. *Contra*, *Tiddy v. Harris*, 101 N. C. 589. As to subrogation of sureties on the official bonds of tax collectors or county treasurers to the rights of the state or county, see *Hook v. Richeson*, 115 Ill. 431, 448; *Livingston v. Anderson*, 80 Ga. 175; *Irby v. Livingston*, 81 Ga. 284; *Turner v. Teague*, 73 Ala. 554; *Boltz's Estate*, 133 Pa. St. 77. It was held in *United States v. Ryder*, 110 U. S. 729, that a surety on a recognizance for the appearance of a person charged with a criminal offense could not be subrogated to the rights of the United States, on grounds of public policy. The right of the surety to subrogation may be waived at the time of payment by the surety, and will be waived by his accepting an independent security which is not cumulative merely, and the enforcement of which is not consistent with the right of subrogation: *Watts v. Eufaula Nat. Bank*, 76 Ala. 474.] *By surety against a co-surety*: *Copis v. Middleton*, Turn. & R. 224, 231; *Fishback v. Weaver*, 34 Ark. 569; *Brown v. Ray*, 18 N. H. 102; 45 Am. Dec. 361; *Administrator of Aldrich v. Hapgood*, 39 Vt. 617; *Elwood v. Deifendorf*, 5 Barb. 398; *Parham v. Green*, 64 N. C. 436; *McCune v. Belt*, 45 Mo. 174; [Steel v. Dixon, 17 Ch. Div. 825; *Berridge v. Berridge*, 44 Ch. Div. 168; *Mason v. Purron*, 63 Wis. 239; *Bonghner v. Hall*, 24 W. Va. 249. That the surety has a right to participate in any indemnity given by the principal to the co-surety, see *Shaeffer v. Clendenin*, 100 Pa. St. 565; *Munden v. Bailey*, 70 Ala. 63; *Cannon v. Conaway*, 5 Del. Ch. 559; but not in indemnity given by a stranger, as the wife of the principal: *Leggett v. McClelland*, 39 Ohio St. 624.] *By the creditor against a surety*: *Moses v. Murgatroyd*, 1 Johns. Ch. 119; 7 Am.

Dec. 478; *Phillips v. Thompson*, 2 Johns. Ch. 418, 421; *Rice's Appeal*, 79 Pa. St. 168; *Wallace's Appeal*, 5 Pa. St. 103; *Burwell's Adm'r's v. Fauber*, 21 Gratt. 446; *Osborn v. Noble*, 46 Miss. 449; *Rardin v. Walpole*, 38 Ind. 146; [Matthews v. Joyce, 85 N. C. 258; *Barton v. Croyden*, 63 N. H. 417; *Holt v. Penacook Sav. Bank*, 62 N. H. 551; *Williamson's Appeal*, 94 Pa. St. 231; *Harmony Nat. Bank's Appeal*, 101 Pa. St. 428. See, however, for limitations on the general rule, *Pool v. Doster*, 59 Miss. 258; *Daniel v. Hunt*, 77 Ala. 567. The creditor does not have the benefit of securities given to the surety by a co-surety: *Hampton v. Phipps*, 103 U. S. 260; nor by a stranger, as the wife or daughter of the principal: *Taylor v. Farmers' Bank*, 87 Ky. 404; 12 Am. St. Rep. 500; *Macklin v. Northern Bank*, 83 Ky. 314.] As the rules concerning the discharge of the surety's liability by the conduct of the creditor are generally enforced at law as well as in equity, I do not enter upon their discussion. [For special circumstances under which such discharge can be set up only in a court of equity, see *Dodgson v. Henderson*, 113 Ill. 360.]

[Instances of the subrogation of one of two debtors in a joint judgment to the rights of the judgment creditor: *Bender v. George*, 92 Pa. St. 36; *Ackerman's Appeal*, 106 Pa. St. 16; that such subrogation cannot be had until the creditor has been fully paid, see *Forest Oil Co.'s Appeal*, 118 Pa. St. 138; 4 Am. St. Rep. 584.

Subrogation of purchaser at a void judicial or execution sale to the rights of the creditors whose debts his money has paid: *Perry v. Adams*, 98 N. C. 167; 2 Am. St. Rep. 326; *Meher v. Cole*, 50 Ark. 361; 7 Am. St. Rep. 101; *Weaver v. Norwood*, 59 Miss. 665; *Flaniken v. Neal*, 67 Tex. 629. It is generally held that purchasers at a void tax sale cannot, in the absence of statute, be subrogated to the rights of the state: See *McRney v. Reed*, 23 Iowa, 410, per Dillon, J.; *McCormick v. Edwards*, 69 Tex. 106. A mere volunteer is not entitled to subrogation.

either by his own acts or omissions. If he does so, the surety's liability is thereby discharged, wholly or partially, as the case may be.

"One of the principles lying at the foundation of subrogation in equity is, that the person seeking the subrogation must have paid the debt under some necessity, to save himself from loss which might arise or accrue to him by the enforcement of the debt in the hands of the original creditor": *Ætna Life Ins. Co. v. Middleport*, 124 U. S. 534, 547, per Miller, J.; and see

cases cited; *Fay v. Fay*, 43 N. J. Eq. 438; *Evans v. Halleck*, 83 Mo. 376; *Bunn v. Lindsay*, 95 Mo. 250; 6 Am. St. Rep. 49; *Dawson v. Lee*, 83 Ky. 49 (one who paid a debt for which he supposed himself to be bound as surety, when in fact his obligation as surety had ceased by operation of a statute, held to be a mere volunteer).]

CHAPTER SECOND.

SUITS FOR AN ACCOUNTING.

§ 1420. Origin of the equitable jurisdiction.

§ 1421. Extent of the equitable jurisdiction; when exercised.

§ 1420. **Origin of the Equitable Jurisdiction.**—The action of account-render was one of the most ancient actions known to the common law.¹ From the narrow scope and technical rules of this action, the inability of common-law courts to obtain a discovery from the defendant on his oath, the difficulty met with in cases of mutual and complicated accounts, and the impossibility of otherwise doing complete justice, it is easy to understand why the action of account-render fell into disuse, and a jurisdiction in equity to entertain suits for an accounting grew up.² The jurisdiction exists, therefore, and is well established; but the question arises, since there is a similar jurisdiction at law, When may a suit in

¹ This action was exceedingly narrow in its operation; for it lay only in cases where there was either a privity in deed, as against a bailiff or receiver appointed by the party, or a privity in law, *ex provisione legis*, as against guardians in socage: Co. Lit. 90 b. By the law merchant, also, the action could be brought by a person, naming himself a merchant, against another, naming him a merchant, and charging him as a receiver: Co. Lit. 172 a. Statutes afterwards extended the action, which was strictly confined to these parties, to their executors and administrators: 3 & 4 Anne, c. 16; 13 Edw. I., c. 23; 31 Edw. III., c. 11. The method of procedure was, first, to obtain a preliminary judgment that the defendant do account, *quod computet*, before auditors, and then a second judgment that he pay the plaintiff the balance found to be due him: 3 Black. Com. 163. But if the balance was in favor

of the defendant, the plaintiff could not be compelled to pay it: 1 Spence's Eq. Jur. 650. Besides this defect in the common-law procedure, the auditors had no power, prior to statute, of examining the parties on oath; and any disputes which arose before them on the items of account could only be settled by as many issues in court: Jeremy's Eq. Jur. 504. This action of account-render was the only means which the common law furnished of obtaining a settlement of an account, except that assumpsit might be brought for a determinate balance: 3 Black. Com. 162. But if the balance was disputed, it was necessary for the jury to investigate the items one by one, a task which was practically impossible.

² 1 Spence's Eq. Jur. 649; Mitford's Eq. Pl. 120, 123; Bacon Abr., tit. Accompt. The action of account-render is perfected in several states by statute.

equity for an accounting be brought? This question, of course, does not arise in those cases where an accounting is decreed as an incident to other equitable relief; nor should it arise where the subject-matter is an equitable interest or estate, for here the jurisdiction should be exercised as a necessary consequence, without regard to legal remedies.¹ It is not in every matter of account cognizable at law that the equitable jurisdiction will be exercised, the general rule being that a proper case is presented when the remedies at law are inadequate.²

§ 1421. **Extent of the Equitable Jurisdiction — When Exercised.** — The instances in which the legal remedies are held to be inadequate, and therefore a suit in equity for an accounting proper, are: 1. Where there are mutual accounts between the plaintiff and the defendant, — that is, where each of the two parties has received and paid on account of the other;³ 2. Where the accounts are all on one side, but there are circumstances of great complication, or difficulties in the way of adequate relief at law;⁴ 3. Where a fidu-

¹ Vol. 1, §§ 218, 219.

² Vol. 1, §§ 176, 178.

³ The accounts must be mutual, as distinguished from matters of set-off, and accounts on one side only: *Dinwiddie v. Bailey*, 6 Ves. 136; *Wells v. Cooper*, cited 6 Ves. 139; *Allison v. Herring*, 9 Sim. 583; *Phillips v. Phillips*, 9 Hare, 471; *Padwick v. Hurst*, 18 Beav. 575; *Fluker v. Taylor*, 3 Drew. 183; *North-eastern R'y v. Martin*, 2 Phill. Ch. 758; *Kennington v. Houghton*, 2 Younge & C. Ch. 620, 627; *Porter v. Spencer*, 2 Johns Ch. 169; *Smith v. Marks*, 2 Rand. 449; *Hickman v. Stout*, 2 Leigh, 6; *McLin v. McNamara*, 2 Dev. & B. Eq. 82; *Hay v. Marshall*, 3 Humph. 623; *Wilson v. Mallett*, 4 Sand. 112; *Durant v. Einstein*, 5 Rob. (N. Y.) 423; *Salter v. Ham*, 31 N. Y. 321; *Walker v. Cheever*, 35 N. H. 339; *Gloninger v. Hazard*, 42 Pa. St. 389; *Passyunk Building Ass'n's Appeal*, 83 Pa. St. 441; *Carter v. Bailey*, 64 Me. 458; 18 Am. Rep. 273; *Dickinson v. Lewis*, 34 Ala. 638; *Avery v. Ware*, 58 Ala. 475; *Garner v. Reis*, 25 Minn. 475; *Haywood v. Hutchins*, 65 N. C. 574 (ac-

counts on both sides, but having no connection with each other). [See *State v. Churchill*, 48 Ark. 426.] For a definition of a mutual account, see *Phillips v. Phillips*, 9 Hare, 471.

⁴ *O'Connor v. Spaight*, 1 Schoales & L. 305; *O'Mahony v. Dickson*, 2 Schoales & L. 400; *Bliss v. Smith*, 34 Beav. 508; *South Eastern R'y v. Brogden*, 3 Macn. & G. 8; *Kennington v. Houghton*, 2 Younge & C. Ch. 620, 627; *Frietas v. Dos Santos*, 1 Younge & J. 574; *Taff Vale R'y v. Nixon*, 1 H. L. Cas. 110; *Mitchell v. Great Works etc. Co.*, 2 Story, 648; *Governor v. McEwen*, 5 Humph. 241; *Watt v. Conger*, 13 Smedes & M. 412; *Kirkman v. Vanlier*, 7 Ala. 217; *Printup v. Mitchell*, 17 Ga. 558; 63 Am. Dec. 258; *Wilson v. Riddle*, 48 Ga. 609; *Lafever v. Billmyer*, 5 W. Va. 33; *Blood v. Blood*, 110 Mass. 545; *Frue v. Loring*, 120 Mass. 507; *Ward v. Peck*, 114 Mass. 121; *Farmers' etc. Bank v. Polk*, 1 Del. Ch. 167; *Trapnall v. Hill*, 31 Ark. 345; *Nesbit v. St. Patrick's Church*, 9 N. J. Eq. 76; *Seymour v. Long Dock Co.*, 29 N. J. Eq. 396; *contra*, *Norwich etc. R. R. v. Storey*, 17 Conn. 364. For cases

ciary relation exists between the parties, and a duty rests upon the defendant to render an account.¹ A plea of stated

furnishing peculiar illustrations of the latter branch of the rule, see *Dabbs v. Nugent*, 11 Jur., N. S., 943; *Coffman v. Sangston*, 21 Gratt. 263. To determine what degree of complication is required before a court of equity will entertain jurisdiction for that reason, independent of other circumstances, the rule was established in England that the account should be so complicated that a court of law would be incompetent to examine it at *nisi prius* with the necessary accuracy: *O'Connor v. Spaight*, 1 Schoales & L. 305, per Lord Redesdale; *South Eastern R'y v. Brogden*, 3 Macn. & G. 8; *Kennington v. Houghton*, 2 Younge & C. Ch. 620, 627; *Taff Vale R'y v. Nixon*, 1 H. L. Cas. 110; *Foley v. Hill*, 2 H. L. Cas. 28, 46. But under the present practice in England, matters of account may now be referred to officers or referees, so that the rule as above stated can now hardly be followed. [A similar practice prevents the following of the rule in New York: See *Marvin v. Brooks*, 94 N. Y. 71; *Uhlman v. New York Life Ins. Co.*, 109 N. Y. 421, 433; 4 Am. St. Rep. 482, per Peckham, J., quoting the last sentence preceding, and holding that the exercise of the jurisdiction, because of complication of accounts, is largely a matter of discretion, and will be refused when it will be of very great inconvenience and possible oppression to the defendant.] The facts of each particular case should govern, and if it is doubtful whether adequate relief could be obtained at law, equity should entertain jurisdiction.

¹ This will embrace suits against trustees—including directors of corporations—which, as before stated, are particularly of equitable cognizance: [See §§ 1053, 1063; as to suits against directors of corporations, see §§ 881, 1092.] Also suits for an accounting between partners; this relation necessarily giving rise to the right of an accounting in equity: *Parsons on Partnership*, 508. The jurisdiction of equity to compel guardians and executors and administrators to account is governed to a great extent in the United States by the powers given to courts of probate: Vol. 1, §§ 77, 78, 347-350; vol.

3, § 1154; [as to guardians § 1097.] See further, *Davis v. Davis*, 1 Del. Ch. 256, and *State v. Quinn*, 74 N. C. 359, on the accounting of guardians in equity. The principal difficulty is as to when equity will take jurisdiction of an accounting between principal and agent. The mere relation of principal and agent, without more,—the relation not being really fiduciary in its nature, and no obstacle intervening to a recovery at law,—is insufficient to enable a principal to maintain the action against his agent: *King v. Rossett*, 2 Young & J. 33; *Navulshaw v. Brownrigg*, 1 Sim., N. S., 573; 2 De Gex, M. & G. 441; *Hemings v. Pugh*, 4 Giff. 456; *Moxon v. Bright*, L. R. 4 Ch. 292; *Crothers v. Lee*, 29 Ala. 337 (attorney and client); *Knotts v. Tarver*, 8 Ala. 743 (agency for a single transaction); *Coquillard v. Suydam*, 8 Blackf. 24 (ditto); *Blakeley v. Biscoe*, 1 Hemp. 114; *Powers v. Cray*, 7 Ga. 206 (attorney and client); *Long v. Cochran*, 9 Phila. 267; *County of Clinton v. Schuster*, 82 Ill. 137 (not maintainable against a treasurer and assessor, as everything was a matter of record). But where the relation is such that a confidence is reposed by the principal in his agent, and the matters for which an accounting is sought are peculiarly within the knowledge of the latter, equity will assume jurisdiction: *Makepiece v. Rogers*, 11 Jur., N. S., 215; *Hemings v. Pugh*, 4 Giff. 456; *Mackenzie v. Johnston*, 4 Madd. 373; *Moxon v. Bright*, L. R. 4 Ch. 292; *Southampton Dock Co. v. Southampton etc. Board*, L. R. 11 Eq. 254; *Thornton v. Thornton*, 31 Gratt. 212; *Taylor v. Tompkins*, 2 Heisk. 89; *Kerr v. Camden Steamboat Co.*, Cheves Eq. 189; *Halsted v. Rabb*, 8 Port. 63; *Hale v. Hale*, 4 Humph. 183; [Marvin v. Brooks, 94 N. Y. 71; *Webb v. Fuller*, 77 Me. 568; *Vilwig v. B. & O. R. R. Co.*, 79 Va. 449; *Rippe v. Stogdill*, 61 Wis. 38.] Other circumstances, as complication and mutuality of accounts, make a stronger case: *Walker v. Spencer*, 13 Jones & S. 71; *Halsted v. Rabb*, 8 Port. 63; *Taylor v. Tompkins*, 2 Heisk. 89; [Colonial etc. Mortgage Co. v. Hutchinson Mortgage Co.,

account obviously constitutes a bar to a suit in equity for an accounting, since in that case the remedy at law is entirely adequate;¹ but of course a stated account may be opened for fraud or error.² The remedy of accounting is in most

44 Fed. Rep. 219.] While the rules are thus settled in favor of a principal, it does not follow that the reverse is true, and that an agent may come into equity for an accounting against his principal, since generally there is no trust or confidence reposed in the latter, and no duty on his part to account: *Padwick v. Stanley*, 9 Hare, 627; *Smith v. Leveaux*, 2 De Gex, J. & S. 1. But there are cases where an agent may maintain the action against his principal; as, for example, where his salary depends on the profits made by his employer: *Harrington v. Churchward*, 6 Jur., N. S., 576; *Shepard v. Brown*, 4 Giff. 208; *Buel v. Selz*, 5 Ill. App. 116; and persons, although not technically partners, who are to receive a certain share of the profits of an undertaking, may likewise maintain the action: *Bentley v. Harris*, 10 R. I. 434; 14 Am. Rep. 695; *Garr v. Redman*, 6 Cal. 574; *Ferry v. Henry*, 4 Pick. 75; *Hallett v. Cumston*, 110 Mass. 32. [See *King v. Barnes*, 109 N. Y. 267; *Darrah v. Boyce*, 62 Mich. 480.] The foregoing rules are applicable, for similar reasons, to part owners: *Strelly v. Winson*, 1 Vern. 297; *McLellan v. Osborne*, 51 Me. 118; *Dyckman v. Valiente*, 42 N. Y. 549, 563; [*Shirley v. Goodnough*, 15 Or. 642;] and to tenants in common and joint tenants taking more than their share of rents and profits: *Early v. Friend*, 16 Gratt. 21; *Leach v. Beattie*, 33 Vt. 195; *Wiswell v. Wilkins*, 4 Vt. 137 (where there are more than two tenants concerned); *Darden v. Cowper*, 7 Jones, 210; 75 Am. Dec. 461; *Wright v. Wright*, 59 How. Pr. 176; *Hodges v. Pingree*, 10 Gray, 14; *Blood v. Blood*, 110 Mass. 545; *Gates v. Frazer*, 9 Ill. App. 624 (no legal liability on one joint owner to account to another with respect to the use of a patent right, but the action maintained under an agreement); [*Dodson v. Hays*, 29 W. Va. 577; *Almy v. Daniels*, 15 R. I. 312.] An action by one tenant in common against another in exclusive posses-

sion to recover a share of rents, profits, and issues, amounting in the aggregate to a certain sum, cannot be maintained in equity: *Pico v. Columbet*, 12 Cal. 414; 73 Am. Dec. 550. At the common law, no action of account for taking rents and profits lay against a joint tenant or tenant in common by another, unless the defendant was constituted bailiff: *Co. Lit.* 200 b; but this was remedied by the statute of 4 Anne, c. 16, sec. 27, and the action could be brought against the defendant as bailiff for receiving more than his share or proportion. This statute has been substantially reenacted in many of the American states, but the equity jurisdiction exists notwithstanding: *Leach v. Beattie*, 33 Vt. 195; *Wright v. Wright*, 59 How. Pr. 176. An accounting is often an incident to a suit for partition between joint tenants and tenants in common: See *Goodenow v. Ewer*, 16 Cal. 461; 76 Am. Dec. 540; *Jones v. Massey*, 14 S. C. 292; *Tyner v. Fenner*, 4 Lea, 469; *Scott v. Guernsey*, 48 N. Y. 106. The relation of banker and customer is not fiduciary in its character, and unless there are other circumstances, there can be no accounting between them in equity: *Foley v. Hill*, 2 H. L. Cas. 28.

The rule is sometimes laid down by text-writers and judges, that where accounts are all on one side, but a discovery is necessary, a proper case is presented for equitable interference, but such a rule seems to be only applicable to cases partaking of a fiduciary character: See cases *ante*, in this note. As to discovery enlarging the equitable jurisdiction over accounting, see vol. 1, §§ 223 et seq.

¹ *Weed v. Small*, 7 Paige, 573; *Bullock v. Boyd*, 2 Edw. Ch. 293; *Dial's Ex'rs v. Rogers*, 4 Desaus. Eq. 175; *Craig v. McKinney*, 72 Ill. 305; [*Wahl v. Barnum*, 116 N. Y. 87; *Hoyt v. McLaughlin*, 52 Wis. 280.]

² *Slee v. Bloom*, 5 Johns. Ch. 366; 20 Johns. 669; *Barrow v. Rhinelander*, 1 Johns. Ch. 550.

instances a necessary incident and part of the relief granted in suits brought by those beneficially interested, against trustees, either express or implied, and persons standing in fiduciary relations, such as administrators, executors, guardians, directors, and the like. The equitable jurisdiction is also practically exclusive in proceedings for an account and settlement of partnership affairs, including suits for an accounting and settlement of the firm affairs between the copartners themselves; suits for a settlement of the firm affairs between the survivors and the executors or administrators of the deceased, when a partner has died; and suits to settle the affairs of an insolvent firm, and to adjust the demands of the firm creditors and the creditors of the individual partners. The equitable jurisdiction over partnerships is a necessary outgrowth of the jurisdiction over accounting, and the remedies of dissolution, injunction, and receivership are incidents necessary to a final and complete relief.¹

¹ The subject of partnership is so broad, requiring so much discussion for its adequate treatment, that I shall not attempt to consider it. The reader is referred to the special treatises which deal with the law of partnership. [King v. Barnes, 109 N. Y. 267, 286.]

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- Conrad v. Williams, 6 Hill, 444, 2 Lead. Cas. Eq. 494, p. 1326.
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- Converse v. Blumrich, 14 Mich. 109, 90 Am. Dec. 230, p. 1248, 1919, 2172.
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- Converse v. Hartley, 31 Conn. 372, p. 1418.
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- Conyngham's Appeal, 57 Pa. St. 474, p. 1889.
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- Cook v. Addison, L. R. 7 Eq. 466, p. 1599, 1603.
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- Cooper v. Lovering, 106 Mass. 77, p. 1229, 1231, 1234.
- Cooper v. Macdonald, L. R. 7 Ch. Div. 288, p. 1452, 1647, 1654.
- Cooper v. Merritt, 30 Ark. 686, p. 1946.
- Cooper v. Newland, 17 Abb. Pr. 342, p. 1853.
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- Cooper v. Schlesinger, 111 U. S. 148, p. 1242.
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- Cooper, In re, L. R. 20 Ch. Div. 611, p. 2123.
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- Coore v. Todd, 7 De Gex, M. & G. 520, p. 1707.
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- Dennis v. Jones, 44 N. J. Eq. 513, p. 1299.
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- Dennis v. Williams, 40 Ala. 633, p. 1917.
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- Dent v. Dent, 30 Beav. 363, p. 1904.
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- Derby v. Derby, 4 R. I. 414, p. 1530, 1914.
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- Latonche v. Lord Dunsany, 1 Schoales & L. 159, p. 893.
- Latrobe v. Tiernan, 2 Md. Ch. 474, p. 1608.
- Lattimer v. Livermore, 72 N. Y. 147, p. 623, 960.
- Lattimore v. Simmons, 13 Serg. & R. 183, p. 1959.
- Lattin v. McCarty, 41 N. Y. 107, p. 92, 218, 317, 477, 1199.
- Latymer's Charity, In re, L. R. 7 Eq. 353, p. 1516, 1523.
- Laub v. Buckmiller, 17 N. Y. 620, p. 92, 218, 317, 477, 1199.
- Lauchner v. Rex, 20 Pa. St. 464, p. 1191.
- Landerdale v. Hallock, 7 Smedes & M. 622, p. 1191.
- Lauer v. Dunn, 115 N. Y. 408, p. 1967.
- Laughlin v. District of Columbia, 116 U. S. 459, p. 991.
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- Lavassar v. Washburne, 50 Wis. 200, p. 1295.
- Lavender v. Abbott, 30 Ark. 172, p. 1918, 1926, 1927, 1932.
- Lavenson v. Standard Soap Co., 80 Cal. 245, 13 Am. St. Rep. 147, p. 2073, 2077.
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- Law v. Grant, 37 Wis. 548, p. 1274, 1275.
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- Lawrence v. Bayard, 7 Paige, 70, p. 1974.

- Lawrence v. Bowle, 2 Phill. Ch. 140, p. 1604.
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 Lawrence v. Tucker, 23 How. 14, p. 1827.
 Lawrence v. Zimpleman, 37 Ark. 643, p. 2148.
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 Lawrence Iron Works Co. v. Rockbridge Co., 47 Fed. Rep. 755, p. 2056.
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- Leary v. Laffin, 101 Mass. 334, p. 606, 607, 610.
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- Lefforge v. West, 2 Ind. 514, p. 520.
- Legal v. Miller, 2 Ves. Sr. 299, p. 1199.
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- Lehigh V. R. R. Co. v. McFarlan, 30 N. J. Eq. 140, 31 N. J. Eq. 706, p. 341, 355, 358.
- Lehigh V. R. R. Co. v. Society etc., 30 N. J. Eq. 168, p. 351, 374.
- Lehman v. Collins, 69 Ala. 127, p. 913, 1948.
- Lehman v. Feld, 37 Fed. Rep. 852, p. 1324.
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- Leigh v. Savidge, 14 N. J. Eq. 124, p. 1913.
- Leigh's Estate, In re, L. R. 6 Ch. Div. 256, p. 249.
- Leigh's Estate, In re, L. R. 6 Ch. 887, p. 1904.
- Leighton v. Leighton, 32 Me. 399, p. 448.
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- Lench v. Lench, 10 Ves. 511, p. 797, 1545, 1556, 1558, 1563, 1930.
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 Myers v. United etc. Ass. Co., 7 De Gex, M. & G. 112, p. 979, 1966.
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- Nace v. Boyer, 31 Pa. St. 99, p. 1363.
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 National Bank v. Holman, 31 S. C. 161, p. 1888.
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- Needles v. Needles, 7 Ohio St. 432, 70 Am. Dec. 85, p. 1373, 1666, 1977.
- Neel v. Clay, 48 Ala. 252, p. 1940.
- Neeley v. Anderson, 2 Strob. Eq. 262, p. 1321.
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- Neesom v. Clarkson, 4 Hare, 97, p. 526, 1860, 1903.
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- Neilson v. Fry, 16 Ohio St. 552, 91 Am. Dec. 110, p. 2190.
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- Patton v. Chamberlain, 44 Mich. 5, p. 1485, 1491.
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- Patton v. Hoge, 22 Gratt. 443, p. 1935.
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- Patton v. Rankin, 68 Ind. 245, 34 Am. Rep. 254, p. 1681.
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- Tindall v. Harkinson, 19 Ga. 448, p. 1254, 1257.
- Tingley v. Cutler, 7 Conn. 291, p. 602, 607.
- Tinkham v. Borst, 31 Barb. 407, p. 1554.
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- Tipping v. Eckersley, 2 Kay & J. 264, p. 2069.
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- Todd v. Moorhouse, L. R. 19 Eq. 69, p. 1904, 1905.
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- Toll v. Davenport, 74 Mich. 386, p. 1083.
- Tollet v. Tollet, 2 P. Wms. 439, 1 Lead. Cas. Eq., 4th Am. ed., 335, p. 799, 800, 1126, 1151, 1152, 1153.
- Tolson v. Collins, 4 Ves. 483, p. 717, 723.
- Tolson v. Sheard, L. R. 5 Ch. Div. 19, p. 1576, 1580.
- Tolson v. Tolson, 10 Gill & J. 159, p. 1504, 1507.
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- Tombs v. Roch, 2 Coll. C. C. 490, p. 1704.
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- Tomkins v. Tomkins, 11 N. J. Eq. 512, p. 2103, 2105.
- Tomkins v. Wiltberger, 56 Ill. 385, p. 1875.
- Tomkinson v. S. E. R'y Co., 35 Ch. Div. 675, p. 1623, 2072.
- Tomkyns v. Blane, 28 Beav. 423, p. 648.
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- Tongue v. Nutwell, 31 Md. 302, p. 537.
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- Tooke v. Hastings, 2 Vern. 97, p. 790, 792, 1897.
- Tooker v. Sloan, 30 N. J. Eq. 394, p. 1368.
- Tool Co. v. Norris, 2 Wall. 45, p. 1342.
- Toole v. Toole, 112 N. Y. 333, 8 Am. St. Rep. 750, p. 2165.
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- Topham v. Duke of Portland, 1 De Gex, J. & S. 517, 11 H. L. Cas. 32, p. 1267, 1308.
- Topham v. Duke of Portland, L. R. 5 Ch. 40, p. 1308.
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- Towle v. Hoit, 14 N. H. 61, p. 1869.
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- Towle v. Swasey, 106 Mass. 100, p. 1692, 1706.
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- Towles v. Fisher, 77 N. C. 437, p. 1134.
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- Traphagen v. Burt, 67 N. Y. 30, p. 1548.
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- Trull v. Skinner, 17 Pick. 213, p. 1818.
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 Vermont etc. R. R. v. Vt. Cent. R. R., 46 Vt. 792, p. 2058.
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 Vernon v. Vernon, Amb. 3, p. 1153.
 Vernon v. Vernon, 53 N. Y. 351, p. 662, 664, 672, 682, 1486, 1495, 1498.
 Vernon v. Vernon, cited 1 Ves. 456, p. 2015.

- Vernon v. Vestry of St. James, L. R. 16 Ch. Div. 449, p. 2083.
- Verplanck v. Van Buren, 76 N. Y. 247, p. 1229, 1234.
- Verplank v. Sterry, 12 Johns. 536, 7 Am. Dec. 348, p. 1415.
- Very v. Levy, 13 How. 345, p. 2159.
- Vest v. Michie, 31 Gratt. 149, 31 Am. Rep. 722, p. 925.
- Vezey v. Jamson, 1 Sim. & St. 69, p. 1510, 1517, 1536.
- Vibbard v. Roderick, 51 Barb. 616, p. 1231.
- Vice v. Thomas, 4 Younge & C. 538, p. 2053.
- Vick v. Percy, 7 Smedes & M. 256, 45 Am. Dec. 303, p. 144.
- Vickers v. Pound, 6 H. L. Cas. 885, p. 1698, 1701.
- Vickers v. Vickers, L. R. 4 Eq. 529, p. 2167.
- Vickers v. Vickers, L. R. 37 Ch. Div. 525, p. 744, 745, 758.
- Vickery v. Welch, 19 Pick. 523, p. 1336.
- Vicksburg etc. R. R. v. Ragsdale, 54 Miss. 200, p. 1138, 1140.
- Vidal v. Girard, 2 How. 127, p. 1510, 1520, 1526, 1530.
- Viele v. Hoag, 24 Vt. 46, p. 215, 277, 379.
- Viele v. Judson, 82 N. Y. 32, p. 906, 909, 910, 1127.
- Viele v. Troy & B. R. R., 21 Barb. 381, p. 1316.
- Vieley v. Thompson, 44 Ill. 9, p. 348.
- Vigers v. Pike, 8 Clark & F. 562, p. 1251, 1264, 1404, 2164.
- Vilas v. Jones, 1 N. Y. 274, p. 2098, 2105.
- Villa v. Rodriguez, 12 Wall. 323, p. 1819, 1825.
- Villa Real v. Lord Galway, 1 Brown Ch. 292, p. 637, 648, 671, 682, 683, 684, 686.
- Villard v. Robert, 1 Strob. Eq. 393, p. 904.
- Villines v. Norfleet, 2 Dev. Eq. 167, p. 1385.
- Vilwig v. B. & O. R. R. Co., 79 Va. 449, p. 2195.
- Vincent v. Newcombe, 1 Younge, 599, p. 1692, 1778.
- Vincent v. Walker, 86 Ala. 333, p. 1822.
- Viret v. Viret, L. R. 17 Ch. Div. 365, p. 1641.
- Virgin v. Brubaker, 4 Nev. 31, p. 1015.
- Virgin v. Wingfield, 54 Ga. 451, p. 830, 922, 1051.
- Virginia v. Levy, 23 Gratt. 21, p. 1528.
- Viscount Clermont v. Tasburgh, 1 Jacob & W. 112, p. 1266.
- Viscount Downe v. Morris, 3 Hare, 394, p. 1866.
- Viscount Holmesdale v. West, L. R. 12 Eq. 280, p. 1478.
- Viscountess Montacute v. Maxwell, 1 P. Wms. 618, p. 1992.
- Vizonneau v. Pegram, 2 Leigh, 183, p. 1650.
- Vogler v. Montgomery, 54 Mo. 577, p. 2067, 2151.
- Voltz v. Voltz, 75 Ala. 555, p. 1175, 1396.
- Von Phul v. Penn, 31 Mo. 333, p. 2145.
- Voorhees v. De Meyer, 2 Barb. 37, p. 1264, 1267, 1999, 2160.
- Voorhees v. Howard, 4 Abb. App. 503, p. 2184.
- Voorhees v. Olmstead, 3 Hun, 744, p. 1121, 1133.
- Voorhis v. Child's Ex'rs, 17 N. Y. 354, p. 477, 560, 561, 2005.
- Voorhis v. Murphy, 26 N. J. Eq. 434, p. 1187.
- Voris v. State ex rel. Davis, 47 Ind. 345, p. 561, 562, 2006, 2007.
- Vorley v. Cooke, 1 Giff. 230, p. 1302.
- Vosburgh v. Huntington, 15 Abb. Pr. 254, p. 2040, 2042, 2047.
- Vose v. Grant, 15 Mass. 505, p. 1554.
- Vose v. Philbrick, 3 Story, 335, p. 206, 412.
- Vose v. Reed, 1 Woods, 647, p. 2054.
- Vose v. Trustees etc., 2 Woods, 647, p. 1576, 1580, 1582.
- Voshell v. Hynson, 26 Md. 83, p. 2050.
- Vought v. Williams, 120 N. Y. 253, 17 Am. St. Rep. 634, p. 2165.
- Vouillon v. States, 2 Jur., N. S., 845, p. 1195.
- Voyle v. Hughes, 2 Smale & G. 18, p. 1467, 1472.
- Vredenburg v. Burnet, 31 N. J. Eq. 229, p. 839, 978, 1004, 1025, 1027, 1853.
- Vreeland v. Blauvelt, 23 N. J. Eq. 483, p. 2165, 2169.
- Vreeland v. Van Horn, 17 N. J. Eq. 137, p. 1467.
- Vreeland v. Vreeland, 16 N. J. Eq. 512, p. 1683.
- Vreeland v. Ryno's Ex'r, 26 N. J. Eq. 160, p. 1683.
- Vrooman v. Turner, 69 N. Y. 280, 25 Am. Rep. 195, p. 1848, 1849.
- Vyse v. Foster, L. R. 8 Ch. 309, p. 1576, 1586.

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Wa Ching v. Constantine, 1 Idaho, 266, p. 2110.

Waddell v. Beach, 9 N. J. Eq. 793, p. 144, 204, 207.

Waddell v. Carlock, 41 Ark. 523, p. 1918.

Waddell v. Lanier, 62 Ala. 347, p. 1364, 1370.

Waddell's Contract, In re, L. R. 2 Ch. Div. 172, p. 1574.

Waddle v. Terry, 4 Cold. 51, p. 676.

Wade v. Am. Colon. Soc., 7 Smedes & M. 663, 45 Am. Dec. 324, p. 1529.

Wade v. Howard, 11 Pick. 289, 6 Pick. 492, p. 1101.

Wade v. Kalbfleisch, 58 N. Y. 282, 17 Am. Rep. 250, p. 1959.

Wade v. Paget, 1 Brown Ch. 363, p. 1449.

Wade v. Pulsifer, 54 Vt. 45, p. 1395, 1404.

Wade v. Thompson, 52 Miss. 367, p. 1462.

Wade v. Withington, 1 Allen, 561, p. 948.

Wadhams v. Am. Home etc. Soc., 12 N. Y. 415, p. 1650.

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Wadsworth v. Davis, 63 N. C. 251, p. 1750.

Wadsworth v. Lyon, 93 N. Y. 201, 45 Am. Rep. 190, p. 1106, 1842.

Wadsworth v. Schisselbauer, 32 Minn. 84, p. 2184.

Wadsworth v. Williams, 100 Mass. 126, p. 1104, 1409, 1412.

Wafer v. Mocate, 9 Mod. 112, p. 618.

Wagar v. Stone, 36 Mich. 364, p. 1809.

Wagenseller v. Prettyman, 7 Ill. App. 192, p. 2188.

Wager v. Wager, 21 Hun, 93, p. 1761, 1762.

Wager v. Wager, 89 N. Y. 161, p. 301, 1761, 1762.

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Wagonblast v. Whitney, 12 Or. 83, p. 2174.

Wagstaff v. Lowerre, 23 Barb. 209, p. 1478, 1498, 1611.

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Wainwright v. Hardisty, 2 Beav. 363, p. 1646.

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Wake v. Harrop, 6 Hurl. & N. 768, p. 1161.

Wake v. Wake, 3 Brown Ch. 255, p. 682, 684, 696, 698, 701.

Wakefield v. Johnson, 26 Ark. 506, p. 1945.

Wakeman v. Dalley, 51 N. Y. 27, 10 Am. Rep. 551, p. 1234, 1242, 1248.

Wakeman v. Dickey, 19 Abb. Pr. 24, p. 2039.

Wakeman v. Dodd, 27 N. J. Eq. 564, p. 1382, 1400.

Wakeman v. Kingsland, 46 N. J. Eq. 113, p. 2034, 2041.

Walcop v. McKinney's Heirs, 10 Mo. 229, p. 1802.

Walcot v. Hall, 2 Brown Ch. 305, p. 1155.

Walcott v. Keith, 22 N. H. 196, p. 1887.

Walden v. Skinner, 101 U. S. 577, p. 1190.

Waldie v. Doll, 29 Cal. 555, p. 1887.

Waldo v. Caley, 16 Ves. 206, p. 1518.

Waldo v. Preston, 135 Pa. St. 181, p. 2097.

Waldo v. Richmond, 40 Mich. 380, p. 923.

Waldo v. Russell, 5 Mo. 387, p. 1012, 1082.

Waldrom v. Waldrom, 76 Ala. 285, p. 1733.

Waldron v. Zacharie, 54 Tex. 503, p. 1920, 1926.

Waldron v. Letson, 15 N. J. Eq. 126, p. 1191.

Waldron v. Simmons, 28 Ala. 629, p. 216, 457.

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- Waldron, **Matters of**, 13 Johns. 418, p. 2013.
 Waldrop v. Leaman, 30 S. C. 428, p. 1385.
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 Walker v. Brooks, 12 Mass. 241, p. 439, 1963.
 Walker v. Buffandeau, 63 Cal. 312, p. 1004.
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 Walker v. Kee, 16 S. C. 76, p. 1940.
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 Walker v. Mauro, 18 Mo. 564, p. 188, 1967.
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- Walker v. Whiting**, 23 Pick. 313, p. 1501.
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Wallace v. Greenwood, L. R. 16 Ch. Div. 362, p. 1786.
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- Walpole v. Apthorp, L. R. 4 Eq. 37, p. 1693, 1694, 1705.
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- Weston v. Bear River etc. Co., 5 Cal. 186, 63 Am. Dec. 117, 6 Cal. 423, p. 974, 996.
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- Wilcox v. Wilcox, 14 N. Y. 575, p. 462, 477, 2010, 2011.
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